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Canada. Royal commission on co-operatives.

Proceedings. v. 2, 1945.

1945















R.  
VII

Canada, Cooperatives, Royal Commission

( ROYAL COMMISSION  
ON  
( CO-OPERATIVES )

1945

PROCEEDINGS  
(OFFICIAL REPORT)

VOLUME No. II  
PLACE Calgary, Alberta  
DATE January 22, 23, 24, 1945  
PAGES 460 - 764



T. S. HUBBARD  
OFFICIAL REPORTER

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Calgary, Alberta, January 22 - 24, 1945

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The Commission appointed to inquire into the present position of co-operatives in the matter of income and excess profits tax, organization and business methods and operations, and the comparative position of persons engaged in business directly competitive therewith, met in Calgary, Alberta, on Monday, January 22, 1945, with sittings continuing on January 23 and 24.

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PRESENT:

The Hon. Mr. Justice ERROL M. McDOUGALL,	Chairman
B. N. ARNASON )	
G. A. ELLIOTT )	
J. M. NADEAU )	Commissioners
J. J. VAUGHAN )	
Eugene T. Parker, K. C.	Counsel
Major H. D. Woods )	Associate
J. A. Chapdelaine )	Registrars
G. W. Ross	Executive Secretary

APPEARANCES:

W. B. Francis, K. C.	Ten Co-operative Associations
G. S. Thorvaldson, K. C.	Income Taxpayers Association
A. Leslie Ham	Joint stock insurers -- fire, automobile & casualty business
W. P. Fillmore, K. C.	Private grain interests
W. Howard, K. C.	Private grain interests
R. H. Milliken, K. C.	Saskatchewan Co-operatives
L. R. Lipsett, K. C.	Retail Merchants Association of Canada
J. V. H. Milvain, K. C.	Eight Alberta Co-operatives
Marshall Porter, K. C.	Alberta Wheat Pool

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Calgary, Alberta,  
January 22, 1945.

The Commission met at 10 a. m., Mr. Justice McDougall presiding.

THE CHAIRMAN: Gentlemen of the Bar and gentlemen, to those who were not present at the opening session of the Commission in Vancouver, may I read what I then said as to the scope and purpose of this inquiry:

"The present Commission has been constituted under and in virtue of order in council No. 8725, dated November 16, 1944, for the purpose of inquiring into --

(a) the present position of cooperatives in the matter of the application thereto of the Income Tax Act and the Excess Profits Tax Act, 1940, and

(b) the organization and business methods and operations of the said cooperatives as well as any other matters relevant to the question of the application of income and profits tax measures thereto, and

(c) the comparative position in relation to taxation under the said Acts of persons engaged in any line of business in direct competition with cooperatives,

and reporting in so far as the same can conveniently be done, all facts which appear to them to be pertinent for determining what would, in the public interest, constitute a just, fair and equitable basis for the application of the Income War Tax Act and the Excess Profits Tax Act, 1940 to cooperatives and to persons other than cooperatives in respect of methods of doing business analogous to cooperative methods, such as the making of payments commonly called patronage dividends and to make such recommendations for the amendment of existing laws as they consider to be justified in the public interest.





"Adherence to the foregoing terms of reference is essential to the prompt and efficient completion of the labours of the Commission, and I venture to hope that Counsel appearing before us will be guided by this observation.

"I need hardly point out that it is no part of the mission with which we are entrusted to try any particular case or to make a ruling in regard to the tax liability of any person or organization. We shall endeavour merely to find the facts upon which an intelligent report may be delivered, leaving to other authority, as, if and when it is deemed advisable, to implement such recommendations as we may consider appropriate.

"I take great pleasure in introducing to you my colleagues: to my right is Mr. B. W. Arnason of Regina, Saskatchewan; to my left is Mr. G. A. Elliott of Edmonton, Alberta; on the extreme left is Mr. J. M. Nadeau of Montreal, and at the right is Mr. J. J. Vaughan, of Toronto. Mr. E. T. Parker, K. C., of Halifax, is Counsel to the Commission and will, in a moment, be prepared to discuss with appearers or their Counsel all details relating to the presentation of their submission. It is hoped thus to avoid redundancy in the hearing of cases and to facilitate the speedy disposal of the work before us. The Registrar of the Commission, Major H. D. Woods, of Calgary, will have charge of all the records and the arrangements of the hearings.

"The briefs submitted have been docketed in the order of their receipt by the Commission and will, as far as convenient, be heard in that sequence. There have been filed for presentation in Vancouver, briefs. In the short time at our disposal we must endeavour to proceed as





expeditiously as possible. In the event of unfinished business, we shall be compelled to refer such cases to a later hearing in Ottawa in March, when the Commission has completed its itinerary. We are now prepared to proceed with the business in hand and I should be glad to have Counsel declare their appearances and to make any observations which they may see fit to make."

Gentlemen, I suggest that we might follow the procedure we adopted in Vancouver and have a short recess to enable Counsel to confer with Mr. Parker regarding the order in which the briefs will be presented.

MR. PORTER: May I say, sir, that I am appearing for the Alberta Wheat Pool, but that we shall be presenting our brief subsequently, not at this sitting. I thought the Commission should be advised of our position inasmuch as this is the locality of our headquarters.

MR. PARKER: Perhaps my learned friend will indicate, if he is in a position to do so, at what point he intends to present his brief.

MR. PORTER: I had in mind presenting it at Ottawa.

THE CHAIRMAN: We are piling up a good deal of work for Ottawa.

MR. PARKER: Before the recess, there are one or two matters I should like to dispose of. Mr. Fillmore, Counsel for certain interests, has handed me a memorandum concerning certain documents. Perhaps he would explain to the Commission exactly what he wants.

MR. FILLMORE: Mr. Chairman and gentlemen, as Mr. Porter has stated that they may not present their brief while the Commission is sitting in this province, and as certain documents, we believe, are relevant and pertinent to the matters into which you are inquiring, we respectfully





suggest that the production of documents be requested as soon as may be convenient, or in any event while the Commission is sitting in this province, where they are available and where such production may be directed or withheld as the case may be. It may be, of course, -- in fact I assume -- that these are all documents which they will likely be producing.

THE CHAIRMAN: Have you been in touch with Mr. Porter?

MR. FILLMORE: No, Mr. Chairman. I have a list here which I shall be glad to give him.

MR. PORTER: This is the first I have heard of such a list.

THE CHAIRMAN: During the recess you can consult with Mr. Porter as to these documents and their production.

MR. PORTER: As far as these documents are concerned, they will all form part of our case. They will be available to the Commission in the ordinary course.

MR. FILLMORE: That is all we wish to be sure of.

MR. MILVAIN: There are two matters which I wish to bring before the Commission. I notified the Commission that I proposed to file a brief on behalf of the U.F.A. Central Co-operative Association. I intimated that it would be presented in Edmonton. I feel that you should be made aware at this time, Mr. Chairman, that it has become quite impossible to get it prepared, the reason being that Mr. Priestly, the manager in Calgary, is very seriously ill. Mr. Church, the president, who has become president of the U.F.A. in Alberta, has been ill too. Last week they had a convention in Edmonton and it has been impossible to get in contact with the appropriate officials of the association in order to get the information.

THE CHAIRMAN: Did you notify the Commission that you



would be presenting the brief at Edmonton?

MR. MILVAIN: Yes; but I shall not be in a position to do so.

THE CHAIRMAN: Have you any idea where?

MR. MILVAIN: In all likelihood, if one is presented, it will be presented in Ottawa or somewhere along the line, if that could be conveniently done. There is a faint possibility that we might get one prepared for Edmonton but it looks very doubtful.

THE CHAIRMAN: You will get in touch with the Registrar?

MR. MILVAIN: Yes. Another matter which I wish to bring to your attention, Mr. Chairman, is this. In the province of Alberta we have prepared briefs on behalf of four associations operating in the milk industry. I refer to the Northern Alberta Dairy Pool, the Central, the Southern and the Co-operative Milk Company here. Probably the responsibility and the fault, if there is any, for the lopsided milk situation in this province falls upon my shoulders. We have no branch of the Co-operative Union in Alberta that took the lead in organizing these matters. All these four briefs are prepared and ready for submission. We have discussed the course taken by the Commission in British Columbia and it has occurred to us that perhaps the Commission, with the shortage of time at its disposal, might not be prepared to have all four of these milk briefs presented now. We are in a position where we can present them all, or such of them as may meet the Commission's time and approval.

THE CHAIRMAN: Here in Calgary?

MR. MILVAIN: In Calgary we had intended to present the Co-operative Milk Company and the Southern Dairy Pool, and the other two in Edmonton. That is something that





might be discussed with Commission Counsel during the recess.

MR. PARKER: There is another matter. A memorandum has been handed me by Mr. Thorvaldson concerning certain matters which transpired in the hearing at Vancouver.

THE CHAIRMAN: We have seen the memorandum.

MR. PARKER: He has asked me to bring it to the attention of the Commission.

THE CHAIRMAN: It seems to me, Mr. Thorvaldson, that unless the witness named in that memorandum is notified, it would be improper to make public disclosure of your statement at this time. If he is notified and told that the statement will be made he will be in a position to defend himself at least.

MR. THORVALDSON: I would like to notify him immediately, then: but I wish to have an opportunity after he has been notified to make this statement of which I have given Mr. Parker a memorandum. I also wish to read the memorandum which I refer to in my statement.

THE CHAIRMAN: I think that, until he has been notified, no statement should be made in that regard. He may want to be represented by Counsel.

MR. THORVALDSON: Yes, Mr. Chairman. But I do want that matter cleared up because the person in question was quite a key witness in Vancouver, and as a result of disclosures made to me since then I feel that his evidence was most inaccurate and that there are certain matters that ought to be cleared up.

THE CHAIRMAN: I understand. But you see the line which we propose to take. Until he has been notified it would be improper to make the statement.

MR. PARKER: My notification I understand you to mean Mr. Chairman, that a copy of the proposed statement should





be furnished to him sufficiently far ahead so that he can appear, if he wishes to do so, when the statement is read?

MR. THORVALDSON: I will try to see that it is done in time for him to appear, if he wishes, in Edmonton. There is one more matter I would mention. I hope that the Commission will take steps to call in every province the Registrar of Co-operative Associations. We are all feeling our way around in this matter, but in Vancouver a very small number of cooperatives gave briefs, and I do not think that the Commission or Counsel have any clear picture of the whole cooperative position in the province of British Columbia. That, I am inclined to think, could really have been obtained only by calling the Registrar of Co-operative Associations, or whatever his designation may be. I would suggest to the Commission that the Registrar or some similar official be called in every province to indicate the growth of cooperatives in his territory.

MR. MILVAIN: The Supervisor of Cooperatives is here.

THE CHAIRMAN: For this province?

MR. MILVAIN: Yes. I took the liberty of getting in touch with his Department yesterday and they sent him voluntarily. He will make a statement on the opening of the proceedings.

MR. FRANCIS: May I respectfully ask whether the memorandum referred to by my learned friend refers to any witness in whom I am interested as representing British Columbia cooperatives?

THE CHAIRMAN: No; I do not think so.

MR. THORVALDSON: No.

MR. FRANCIS: On a second point, sir: a close investigation was made in British Columbia to determine



whether or not the calling of a government official would assist the Commission, and I think we came to the conclusion that there was no government official available who would be in a position to give a clear picture of the situation.

THE CHAIRMAN: Are there any other representations to be made before we take recess?

MR. PARKER: There is one other matter, Mr. Chairman. Mr. Lipsett has asked me to arrange to have his brief heard at Wednesday's sitting in order that public notice may be taken of the fact that it has been set down for hearing here rather than at Edmonton as originally intended, if that meets with the approval of the Commission. I see no reason why it cannot be set down for Wednesday, and any persons interested will take notice and govern themselves accordingly.

THE CHAIRMAN: Have you any idea how long the presentation of your brief will take, Mr. Lipsett?

MR. LIPSETT: I do not think it will take as long as the size of the volume suggests. There is a good deal in it that is already known to the Commission, but when it was being prepared, naturally, no one knew how much information you would have. I assure you, sir, you need not be perturbed.

THE CHAIRMAN: My preoccupation is that we are leaving Calgary on Wednesday night.

MR. LIPSETT: There will not be any difficulty. When it was found impossible to have the brief ready for delivery in Vancouver on Monday last I thought it would have to be heard at Edmonton, but the secretary of the Retail Merchants notified about forty of his members and the brief was got ready with the idea that it would be given in Edmonton. That is the present position, and I would be very much obliged if





you would publicly notify those who are interested, so that the facts now being brought to the attention of the Commission will be in the press, and notice given that the brief will be heard here, so that no one will be disappointed.

THE CHAIRMAN: Are there any gentlemen of the press here? If so, may I ask whether publicity will be given the statement that this brief will be heard on Wednesday, the twenty-fourth?

MR. SULLIVAN: (Canadian Press): Yes.

THE CHAIRMAN: Perhaps we can adjourn now for a few minutes to enable Counsel to get together.

(After a brief recess):

MR. PARKER: I have consulted with those who are interested in the various briefs to be submitted, and it is agreed by all that the first brief to be heard will be that of the Ellison Milling and Elevator Company Limited, followed by the two briefs which are filed by Mr. Milvain, and finally the brief filed on behalf of the group of independent dairies as represented by Messrs. Erich Richardson and Company. Before we proceed with the first submission, however, Mr. Fitzpatrick of the Government Service is here with some statistics relating to the matter in general and I suggest that he be sworn and be asked for the information in his possession.

FREDERICK J. FITZPATRICK,

Supervisor of Co-operative Activities  
and Credit Unions,  
Department of Trade and Industry,  
Province of Alberta,  
having been duly sworn testified  
as follows:

BY MR. PARKER:

Q. What position do you occupy, Mr. Fitzpatrick?

A. I am Supervisor of the Co-operative Activities and



Credit Unions under the Department of Trade and Industry of the Province of Alberta.

Q. How long have you occupied that position?

A. Three years on the 1st of April.

Q. About how long has that department been organized, and how long have statistics been kept? A. Six or seven years possibly.

Q. State generally, if you will, the type of information which is filed with that department under you as Supervisor. A. First, Mr. Chairman and gentlemen, I was asked by the Government of Alberta, when they directed that I should come here, to extend to you gentlemen a very hearty welcome to the province and to express the hope that your stay here will be both a pleasure and a profit so far as your inquiries here are concerned. Mr. Arnason is one of our close neighbours, Mr. Elliott is one of ourselves, and winters such as we have here are nothing new to them. The eastern gentlemen of the Commission have used very good judgment in coming west for the winter instead of staying down east.

THE CHAIRMAN: From what we have experienced so far, Mr. Fitzpatrick, I think I can say that we are inclined to agree with you.

THE WITNESS: When a group of people set up a co-operative association they get in contact with our office for information, and after they have made a certain amount of study of what they want to go ahead and do, we supply them with memorandum of association and articles of association. There are standard by-laws and supplemental by-laws.

BY MR. PARKER:

Q. The documents to which you refer are statutory forms? A. Yes.





Q. Schedules to the Act? A. Yes, schedules to the Act, in the case of the Co-operative Associations Act; but there is no memorandum nor are there by-laws set up under the Marketing Act. Those are drawn by us and are practically the same as the others.

Q. That is what I want to get clear, whether they are prescribed by statute or made pursuant to some regulations passed by the department or made by an individual constitution of their own. A. In the Co-operative Associations Act, under which consumers' cooperatives are set up, the schedule to the Act sets up the form of memorandum of association, and a section in the Act says that there may be standard by-laws, which there are.

Q. And those are prescribed as a schedule to the Act? A. Yes.

Q. They are free to modify those? A. Not to any extent. They have supplemental by-laws which prescribe how they may take members in or kick them out again, fix the dates of meetings, set the value of shares, and other things that cannot be covered in the standard by-laws inasmuch as they may not be standard. After they have ten people, with others who are willing to join with them, they apply to us for a charter to operate a cooperative. These papers come to me and if I approve of them I recommend them to the Registrar.

Q. The Registrar of Joint Stock Companies?

A. Yes, under the Provincial Secretary's Department. I send them to him with my recommendation and he issues the charters which are then sent back to us and we send them to the group who have set up as a cooperative.

Q. That is how they have their birth, so to speak and are ready for business? A. Yes.



Q. What I am particularly interested in at the moment is the returns. A. The mechanics of our credit unions are practically the same, I may say. There are standard by-laws with supplemental by-laws as well.

Q. What about the mutual fire institutions? A. There are no mutual fire insurance companies in this province, but I understand that the only way such an organization could be set up would be under a special act of the legislature.

Q. You have no statistics in your department dealing with mutual fire insurance? A. No.

Q. But you have some dealing with so-called cooperative associations and credit unions? A. Yes.

Q. Have you brought with you certain information in tabular form relating to the number of cooperatives in this province as reported to you? A. I have copies of a bulletin issued in October, 1944, giving the business transacted by different types of cooperatives.

Q. Let us get it identified.

THE CHAIRMAN: What returns do these organizations make to you or your department?

THE WITNESS: They are required to make a return of their financial statement at the end of the year. They make the return to my office and we compile the information from that return.

THE CHAIRMAN: Are those statements examined, and is action taken in any case? What supervision is there?

THE WITNESS: The auditor who makes the statement has to be approved by my office before he is acceptable or can be used by that cooperative. They send their statements to us signed by the auditor whom we have approved of and we make our statements from that. So far as the credit unions are





concerned, they are required to furnish us with a monthly balance sheet because they are handling the money of the people, and we make a consolidation in the office every month of the whole credit union set-up covering the 168 credit unions in the province.

BY MR. PARKER:

Q. This sheet which you have given me we will mark as Exhibit 1. That Exhibit sets forth certain figures under certain heads: Units Reporting; Business Done; Assets; Net Worth; Members. That last column, I take it, means the number of members? A. Yes.

Q. And that information is given for three different years? A. 1943, 1942 and 1941.

Q. You have certain comments at the bottom?

A. In my office we issue a monthly bulletin on credit unions and cooperatives which we send to the President, the Secretary and the Manager of each cooperative, and to three officers in each credit union. It consists of news and such-like regarding what is going on in the movement that they are interested in, and one of the main things they are interested in is how the business is getting along. In one month of each year we get figures and publish them in the bulletin. What I have given you is a copy of a two-page bulletin..

Q. This is for the month of October, 1944?

A. Yes. There are two pages and that is one.

Q. Under the heading "Units Reporting" you have listed a number of units according to the nature of the business they do. For example, there are 73 stores, 16 farm supplies, 39 livestock, 14 feeders, 17 dairy and poultry, five grain and seed and 22 sundry, making a total of 186 units. That represents the number of cooperatives that



have reported? A. That is the number that have reported. There are probably another twenty that did not report.

Q. How many are in existence in addition to those that report? A. At the end of 1943, when that report was made, there were probably 215 or thereabouts. At the end of 1944 there were 249, quite a number having been organized during that year, and the division of them in 1944 shows that there were 90 stores, 30 farm supplies, 55 live-stock marketing, 18 feeders, 15 dairy and poultry and 41 sundry. In that "sundry" they have a division they call grain and seed. There is also some power.

Q. These cooperatives that are organized through the method you have outlined -- are they by law supposed to report to you in your department? A. Yes.

Q. Do you find as a matter of fact that they do practically all comply with that requirement? A. Yes, they are doing very well. They are doing better all the time; we get after them. They are mostly farmer organizations.

Q. I suppose there are some that are more or less dormant, negative, so that it does not make much difference whether they report. A. There are always a few that temporarily are not doing business. Next year they may be back in business, doing a lot of business.

Q. The only angle from which I am interested is whether or not this table you have supplied is reasonably complete. A. It is reasonably accurate.

Q. Representing the situation as it is? A. Yes.

Q. The second column, by the same token, represents in dollars the business done? A. Yes.

Q. These documents speak for themselves. The third column shows assets. Just what does that column include?





A. That column would include cash on hand, Victory Bonds, which all have, buildings and all of the stock-in-trade; and, with livestock marketing associations, their stock-yards and weigh scales and the buildings they may have; while in the dairy and poultry there would be the drying plant in Edmonton, the hatcheries in Edmonton and Lethbridge, and the creameries and cheese factories of all the different organizations.

Q. In making up all these different assets that you have given here, do you make a distinction between merchandise which has been bought outright by cooperatives and merchandise that may be in the possession of the consignee?

A. The consignee does not enter into it because it does not belong to him.

Q. You have excluded anything that represents consignment commodities? A. Yes.

THE CHAIRMAN: Does your department exercise any control over cooperatives to see that they carry out the principles enunciated in the Act?

THE WITNESS: Oh yes. We attend an awful lot of their annual meetings and talk to them and read them many letters. If they send a statement that is not correct, or if they are doing a credit business which they are not supposed to do, we never prosecute them but we get after them as much as possible to follow the regulations and do business on a proper basis.

BY MR. PARKER:

Q. The fourth column shows the Net Worth. How do you arrive at those figures? A. We take from their assets their liabilities which they might owe to the wholesaler for goods or owe to somebody else from whom they might have bought buildings, and arrive at the difference between the



liabilities and the assets, to show their net worth.

Q. As regards reserves which a cooperative may show in their accounts, or any amounts that may be owing to their members, did you include those incalculating the liabilities of these cooperatives? A. Yes. Shares and reserves are shown on the liability side of the financial statement because they owe it to the members.

Q. The last column speaks for itself: it represents the number of members reporting? A. Yes. There are some duplicates, of course.

Q. I suppose that is so. A. It cannot be helped; there are many people who belong to different organizations.

Q. So that the 142, 869, which is given as the total number of members, does not necessarily mean that there are that many individuals? A. No.

Q. Could you give an estimate at all as to how much that should be reduced if you were reporting the number of individuals? A. I would not be able to tell you anything definite on that. It would be offset by the fact that the head of the household is a member, and if he had five, six or seven in the family you could count the food they are buying as bought from the cooperative store, so that the membership should go up.

Q. But are they included? A. No. Only the man who is a shareholder or member by application.

Q. I think it might be of benefit to any gentlemen who may be interested if you would read the comments you have made with respect to the figures. They are short and they explain the facts better than I can do it.

THE CHAIRMAN: Unless he prefers to speak to those comments.

THE WITNESS: Immediately under the set of figures I have given I have this note: "Prompt return to the





Supervisor's office of Financial Statements, furnishing the above information and numbers of members, makes it possible for us to make this report. Some associations have not yet supplied us with the full information so that our record is not complete. If you wish to see the figures grow, be prompt and complete in making your returns." That is a sort of prod to make these people turn them in quickly. The financial year does not end at the same time in all cases. Many of the livestock shipping associations claim that they are too busy in winter to have their year end then so that they have it in the summer time, and that throws us off a bit in getting information. We eventually get it but not in time for the report.

BY MR. PARKER:

Q. The rest is not relevant? A. No; that is newspaper stuff.

Q. Is there anything further you are in a position to tell us officially of the department which will throw light on the nature of these cooperatives? A. I should add that the stores are all required to send us a monthly statement in addition to the financial statement at the end of the year. This form is furnished by us. On the 26th of the month we send each cooperative store this form. There are two copies and we ask them to return it to us. The heading at the top says: "This is a copy of the report given to our Board of Directors at the meeting" on a certain date, and one of the main points behind that is that we want the management of the store to keep the Board elected by the members well informed as to the operations of the organization. With that we have their financial statement, what cash they started with, how they finished up that month, how much goods they sold during that month compared to the corresponding month in the previous



year, whether there are bills receivable or payable, and how they compare with previous years. We are endeavouring to get them to put themselves in a good financial position, to keep their debts paid, and to have them keep their Board well informed as to what they are doing, so that the Board will see that they are operating all right. From those statements we find that many of these stores have heavy increases from month to month during the year, and the total business, when we sum it up for 1944, will probably run to one hundred million dollars.

THE CHAIRMAN: Does the department do anything in the way of fostering education in cooperative methods or anything of that kind?

THE WITNESS: Yes. We help to provide a cooperative school at the university which is held for five or six days in February and as many as possible of the managers are given instructions by chartered accountants on bookkeeping methods and in different phases of the movement as regards the operation of stores and all that sort of thing. In addition to myself, I have a Deputy Supervisor of cooperatives and a Deputy Supervisor of credit unions, and all of us are out a good deal of the time attending meetings to help that organization work, besides helping them in any other way we can.

THE CHAIRMAN: Is there any financial aid?

THE WITNESS: Under the Co-operative Marketing Associations Guarantee Act, marketing organizations which are organized under that Act may have their loans at the bank guaranteed by the provincial treasurer on my recommendation. Under the Frozen Food Locker Act cooperatives who set up cold storage facilities for their people, with lockers, may have their borrowings guaranteed by the





Government on my recommendation.

THE CHAIRMAN: Generally, how does that account stand?

THE WITNESS: It is not so very high now because, with the extensive business done during war time, their indebtedness is pretty well cleaned off; but in the spring of the year under the feeders associations -- this is one of the big operations from the financial standpoint -- there will be outstanding anywhere from a million and three quarters to two million dollars. These organizations are set up in a neighbourhood where a group of farmers have feed and buildings but have no money to buy cattle. The association borrows money and buys feeder stock. They have a supervisor or manager who must go around and make sure that the farmer has proper feed and housing for his animals, and they will buy for him a number of animals. In the spring of the year, or whenever the livestock is ready for market, he takes back to the feeder association the animals that are ready, enough to cover what they gave him in money. If there were twenty animals and it required only eighteen to pay the association, he would keep the other two or sell them or do what he liked with them, and the association pays back to the bank the money guaranteed by the Government, and every spring the loans are cleaned off. There are a few loans out at the present time.

THE CHAIRMAN: They are satisfactory to the department?

THE WITNESS: Yes. There is no difficulty about that. The money is being paid back. As far as the frozen food locker plants are concerned these were all this year loans because the Act was only passed at the last session of the legislature.

BY MR. ARNASON:



Q. In connection with credit unions, I note you list 119. Can you tell us the nature of these? Are they rural, consisting of farmers? A. There are now 168, Mr. Arnason, and over 60 per cent of them are rural; and as regards the amount of money, probably the 40 per cent of the city ones are much more wealthy because it was easier to organize groups of employees in the cities than it was in the country. Now, however, it is spreading in the rural areas and they are now putting money into the credit unions and doing a good job for themselves.

BY MR. PARKER:

Q. I was coming to that as a separate item. These figures you have supplied are for three years. Would it be possible to furnish the Commission with similar figures over a period of years so that we might see the growth by comparison? A. We have 1937 and 1939.

Q. What about 1938 and 1940? A. They might be made available.

Q. Perhaps you could prepare this information and send it to the Registrar. You might send him any figures you have. A. I could get the rest of the figures and supply them at Edmonton,

MR. VAUGHAN: Including 1944?

MR. PARKER: Bringing them to date.

THE WITNESS: As far as the financial statements are concerned, there are probably only half a dozen that are in yet. With the shortage of auditors we have a terrible time having statements audited. Most are presented to the annual meetings held in January, February or March before they are sent to me.

MR. VAUGHAN: You have given certain facts.

THE WITNESS: Yes; I have given facts in regard to the number of organizations.





BY MR. PARKER:

Q. Will you look at the third paragraph in the comments that are given in this bulletin following the figures that are set out: "Chinook branch of the U.F.A. Central Co-operative has bought out another business and have organized a credit union to take care of credit business." Have you any knowledge as to whether or not ordinary limited companies are selling out to the cooperatives or vice versa? A. Not vice versa, but cooperatives have bought out this year a great many privately owned stores mainly because the owner was up in years, operating the business by himself, expecting his boys and girls to take the business over from him. Well, the boys and girls have gone to the war and the man is left there, up in years, fairly well off maybe, and with rationing and all that sort of thing he finally gets to the place where, if anyone will buy the place, he will sell it.

Q. Is there any other reason you know of other than the general reasons you have mentioned? Do you know of any special reasons which might explain why private businesses are being bought out by cooperatives? A. I don't know of any other reason except that there's lots of money in the country, and a group of farmers get together and decide, "Here's a fellow who wants \$25,000 for his store; we will buy it from him."

Q. Do you know of any of these stores being bought out by larger non-cooperative institutions?

A. Not that I hear of; I don't see that being done.

THE CHAIRMAN: Do you see any advantage in the buying out of privately owned companies.

THE WITNESS: I have two or three in mind that had



only a small set-up of their own and were doing only a third of the business done by the privately owned store in town, but there was an opportunity to acquire it. The man wanted to sell and get out and he would offer to sell the concern to them and they would buy him out. This would give them a bigger set-up and provide greater services for the members.

THE CHAIRMAN: Does it often happen that the original owner remains in the organization?

THE WITNESS: In some cases, but most of them want to go to the coast despite our good weather here.

BY MR. PARKER:

Q. You are pretty close to business affairs in Alberta. Do you know of any other reason that might be an inducement for cooperatives to buy out independent stores?

A. I have never asked them why. They are anxious to do it and they go ahead.

Q. I merely asked you if there was any reason you knew of yourself. A. No.

THE CHAIRMAN: To put the question bluntly, has the tax situation anything to do with it?

THE WITNESS: I would say no.

BY MR. PARKER:

Q. You have a similar sheet in regard to the credit unions? A. I have a consolidation of their business at the end of November in 1944. We can have that prepared.

Q. Will you look at the document marked Exhibit 2 and tell me what it is. It deals with credit unions? What is it? A. It is a consolidated balance sheet of the whole cooperative movement in the province, or the credit union movement rather. Every credit union is required to furnish our office at the end of each month with their





financial statement for that month.

Q. In the form of Exhibit 4? A. Yes. That is the statement of my own credit union of which I happen to be President.

Q. You say they have to make returns in forms supplied by the department, of which Exhibit 4 is an example? A. They are required to furnish me with a copy like that for every credit union in the province, every month.

Q. And, generally, that is to supply the department with what information? A. It is for the examiner in the office to check this over with the previous statement to make sure that the books of the credit union are all right -- they are actually little banks -- and that the money is being properly handled and being kept track of.

Q. "These reports show the receipts under the following headings: Shares Account; Deposits Account; Loans Account; Interest Received on Loans; Fines Account." I don't understand that; what would that be? A. Well, if a man joins a credit union and agrees to buy a share at \$5.00, on which he would pay fifty cents a month, and does not continue to make payments, you can fine him -- not less than five cents. In my credit union we do not fine him.

Q. Interest on savings; what would that be?  
A. Is there any amount opposite it?

Q. This particular one is the huge sum of ninety-three cents. I am not interested in the amount but the source. A. Oh, that is the reserve fund which this membership fee must go into. There is 20 per cent of the surplus at the end of the year. First 20 per cent goes into the reserve to take care of bad debts if there are



any. That is kept in a separate account in the bank and we get ninety-three cents. There is one item there which I might explain. We have a collector in one department where they can make payments and he did not see why he should have money of his own to make change, so we gave him \$5.00, which is petty cash.

Q. These are the headings under which these companies must report their receipts? A. Yes.

Q. And on the opposite side they are supposed to report disbursements? A. Yes.

Q. I see here shares account, deposits account and "others". Tell us what that is. A. In a credit union you can put permanent savings in shares or you can have money you may wish to take out for some purpose or other -- a Christmas fund for instance -- which you put in deposit account. We don't do very much of that.

Q. Loans account. This is substantial? A. That is the amount of money loaned that month.

Q. That is, this particular credit union? A. Yes.

Q. And they are all built on the same plan? A. Yes, they are all the same.

Q. Interest paid on deposit accounts. By deposit you mean that the member comes in and makes a deposit as one would in a bank? A. Yes.

Q. There is an item here with regard to dividends. What would that be? Dividends or what? A. Dividends declared at the annual meeting last year.

Q. Dividends on what? A. Interest on their share money.

Q. Investment for reserve account? Then I see here office supplies, expense account, interest rebate. What





would that be? A. Borrowers. The members who borrow money are charged a flat rate of interest during the year and at the end of the year we figure that they made business for the association and we give them back some interest.

Q. How is that amount of rebate arrived at?

A. It would be 25 per cent on the amount of interest paid.

Q. It fluctuates? Next year it might be more or less? A. All depends on the service.

Q. Guarantee fund. What is that? A. That is 20 per cent of the surplus that year set aside to the guarantee fund or reserve fund, and under the law that must not be distributed unless the credit union is liquidated.

Q. Is that the same as a reserve fund? A. Yes.

Q. I see here Victory Bonds -- substantial in this case? A. We had money that was not being borrowed and we put it in Victory Bonds.

Q. Money you were holding on deposit? A. Shares.

Q. Money received from the sale of shares?

A. We do not sell shares. You deposit your money in what is called a share account. It is a misnomer as far as the act is concerned. There are no shares in the credit union but the act calls them shares.

Q. If there are no shares there can be no money coming in from the sale of shares. A. No.

Q. You had some money with which you purchased Victory Bonds. What was the source of that money which the credit union used to buy Victory Bonds? A. Savings that members put in as permanent savings, and it is in the column called shares.

Q. That is not the same as deposits? A. No; that is in another column. The reserve is set aside, put into another column.



Q. And insurance fund? A. We are the only ones who have that.

Q. What is this item in connection with the Alberta League? A. We deposited \$500 of our money, sum we received for Victory Bonds, in the Alberta Credit Union League to loan to other credit unions that needed money.

THE CHAIRMAN: That is, the League -- the wholesaler.

THE WITNESS: Yes. All credit unions in the province belong to the League. Credit unions that have surplus money not being used can deposit it in the League. The League then loans money to credit unions that need money for certain purposes, all short-time stuff.

BY MR. PARKER:

Q. That is a sample of this particular one, and the reports you get from all are compiled on the same plan? A. Yes.

Q. Are you in a position to tell us how many of these credit unions there are in Alberta at the present time? A. One hundred and sixty eight.

Q. Those are the ones that file returns with you? A. At the end of November 1963 had filed returns. There were 166 in operation at that time but until they had been operating for two or three months there is nothing to make a report on. But there is no argument with them as in the cooperatives; they have to file returns.

Q. Are you in a position to state whether as a matter of fact they all do file returns? Is there any difficulty in getting them to make returns? A. No. They file returns.

Q. You are satisfied that they do? A. Yes. If they don't we go after them and make them.





Q. This statement marked Exhibit 3 purports to be what -- a list of credit unions? A. That is a consolidation from these statements here for all the credit unions in the province.

Q. Let me put it on the record. This Exhibit 3 is a consolidation of all the information shown on Exhibit 1? A. Yes.

Q. Relating to all the credit unions of which you have official knowledge in your department. Is that correctly stated? A. Yes.

Q. As of what date? A. November 3, 1944.

Q. That document contains the name of every active credit union in Alberta and lists the number of members of each, the total loans made since it was incorporated? A. Yes.

Q. The amount loaned by each since it was incorporated, or the outstanding loans at the present time? What is that? A. This is the loans since the inception, and that is the list outstanding at that time.

Q. And the next column, cash investments, represents what each credit union is holding by way of assets at the present time? A. Yes.

Q. The next column, total assets, shows what? A. \$6,980 would be in that, a balance made up by loans outstanding. These two columns together, loans and cash investments, are the total assets.

Q. Under the heading "shares" it shows a good deal of money. We had some mention of shares before. They do not have shares? A. Share deposits, which are savings, some of which may be on share deposit and some on straight deposit, or ordinary deposits. The totals together are the total amount of money the members have to their credit in



the credit union.

Q. Are these amounts kept separately in the account of the association so that each member knows what proportion is his? A. There is a sheet in the ledger for every member and every member has a pass book which is an exact copy of the sheet of the ledger.

Q. The sum total of the little pass books should represent the gross shown in the statement? A. Yes.

Q. There is an item here of reserves. What is that? A. That is an accumulation on their profit and loss account showing how much is accumulating over and above what they spent and is available for distribution at the end of the year.

Q. Will you pass that up to the Chairman. Can you supply us with copies of the documents so that the Commission can study them? A. That is a consolidation.

BY MR. ARNASON:

Q. Have any Alberta credit unions, to your knowledge, been required to collect a tax on share dividends at the source? A. No. We discussed that with them and were told not to bother.

BY MR. PARKER:

Q. Discussed it with whom? A. The income tax authorities.

Q. At Ottawa? A. No, in Edmonton. If we were to take that large sheet, with these fourteen or fifteen thousand members, and every one of the credit unions had sent in a sheet to the income tax office showing from two cents up to two or three dollars they got in dividends they had deducted 7 per cent from, and those officials up there had compared these with all the personal returns sent in, the amount of work entailed would not be half paid for from the





tax they would get. And the shares are really the same as your savings bank account, and no one ever thought of having the bank collect at the source the interest you get. These are savings of ordinary people who will not go to a bank to deposit money in the regular way. The total accumulation there is \$912,000, which is made up of these small savings of some fifteen thousand people, who ordinarily would not have had money saved at all. But when they go into one of the offices in the building in which they work and make a deposit with some one they know they will do it regularly, however small the amount may be, when they will not go up town to do the same thing.

BY MR. ELLIOTT:

Q. Mr. Parker asked you about the cooperatives buying out new stores, and their purpose in doing so. Do you remember that? A. Yes.

Q. Can you tell us whether the associations called stores, presumably consumer stores, are exempt under section 4 (p) of the War Income Tax Act? A. The bulk of them have been exempt. There is the odd one that has paid income tax because they do not follow the principles laid down in section 4 (p).

Q. Are the members mostly farmers? A. Yes.

Q. There are not many city cooperative stores? A. There are no urban cooperative stores in the province -- stores that are entirely urban. There may be a few in the larger towns to which the town people belong. I belong to one in Edmonton. But in the bulk of them, 95 per cent are rural members. In a small town the elevator men may belong to cooperative stores, but, as I say, the bulk of them are farmers.



BY MR. THORVALDSON:

Q. May I ask one or two questions. In connection with the financial statements filed by the cooperatives with your office pursuant to the act, are those statements public documents available to the public, or are they private? A. They are only for my use in the department.

Q. One or two questions about a matter you referred to. You referred to the purchase of stores by new cooperatives and you said that in most cases it was because the storekeeper was getting old and his boys and girls were overseas or had gone away. Were you making a guess there, or can you give us information from your own knowledge on that point? A. Yes. The store at La Glace was owned by a man whose wife was in very bad health and he wanted to leave the district. He therefore went to the cooperative people, who were operating a store in that town, and offered to sell to them.

Q. How many more cooperative stores are there now than at the end of 1943? A. There would be fifteen more than there were at the end of 1943, in stores alone.

Q. How about cooperative associations? A. There were 249 at the end of 1944 and 186 or 187 reported at the end of 1943, though there were 200 operating or a little over.

Q. A difference of 65? A. No.

Q. A difference of from 40 to 60? A. A difference of from 25 to 40.

Q. And of how many of these were you speaking from personal knowledge when you referred to the storekeeper being old and his sons having gone away? A. The total increase is in all types of cooperative associations. Stores are only a small portion. There is seven millions





as against seventy millions in the total business done.

Q. As to stores, how many are you speaking of from your own knowledge? A. All of them that have been bought. They were bought by cooperatives from people who wanted to get out of the business.

Q. All of them? A. They must have wanted to get out or they would not have sold.

Q. Is that the reason you made that statement? A. If you want different ones I can tell you which sold out.

Q. You made a very general statement, that in most cases the sales of these stores to cooperatives occurred in cases where the storekeeper was getting old and his sons and daughters were probably overseas, and you said that in most cases the storekeeper went to the cooperative. A. You misunderstood what I said. I was referring to the fact that many storekeepers, because of such situations as I mentioned, wanted to sell out.

Q. Mention one. A. There is one at Collinton. The owner wants to sell to the cooperative now because his boys are not coming back.

Q. Mention another. A. Then there is one at Bawlf. In this case a lady was getting old and she went to the coast. Then there is another case at Strome. The old fellow who had a store there wanted to get out. Then there was a man at Vegreville, where a man wanted to leave the country and he sold his store to the Vegreville cooperative.

Q. Any others? A. The fellow operating the store for the man there went into the Air Force and the store was sold to the cooperatives.

Q. Do you know of all these personally? A. Yes.



Q. All this year or some a year or two ago?

A. All since the 1st of February.

Q. Do you know of any others since the 1st of February? A. There is one at Blue Sky. A young chap was in the Air Force and he left a lady to operate the store. Her health went bad and he came back and made a proposal to the farmers in the district and they raised \$20,000 and bought him out.

Q. Do you know of any more? A. That is all I can think of.

Q. Well, that is not nearly all. A. There may be some more. There is one at Wainright under way now, and several others.

Q. But your statement is broad. A. I was making a broad statement giving my general opinion on it.

Q. One other point -- A. I might mention one at Pibroch and another at Irma. There are two or three others.

Q. The Chairman asked you the question as to whether income tax had anything to do with any of these conversions of private business concerns into cooperatives and you made the categorical answer, no. I was wondering if you were guessing; if not, on the basis of what facts or conditions did you make that reply? A. I had a certain amount to do with all these deals and I never heard income tax mentioned at any of these places so I took it for granted that "no" was the proper answer.

Q. Have you discussed the tax question with any people who have been desirous of organizing cooperatives?

A. I certainly discussed it with the cooperatives. That question usually comes up at every annual meeting.

Q. And when you discussed it with cooperatives



what was your advice to them? A. To keep their skirts as clean as possible.

Q. Do you advise them as to whether there is a difference between the taxation of cooperatives and the taxation of private businesses, or do you not give advice along that line? A. I quote section 4 (p) and tell them that if they live up to that act they should be all right.

Q. And after you tell them that, do you say that the tax question has nothing to do with any of these conversions? A. That is a matter of opinion and I may have my opinion.

Q. So that when you made the categorical answer "no" you change that now and say that it is a matter of opinion. A. I still stick to my previous answer "no". I have never heard the tax question raised in any of these deals made by cooperative associations and private business. It may have been in the minds of some but I did not hear it. No one ever said it to me.

Q. You know about section 4 (p); you have referred to it. Do you think that the present failure of the Income Tax Department to assess cooperative associations, whether they come within 4 (p) or not, gives cooperative business an advantage over business? A. I don't think I should give my opinion on that.

MR. PARKER: I am inclined to think the witness is correct.

BY MR. THORVALDSON:

Q. Do you know as a matter of fact whether there is an advantage? A. That is a matter of argument about profits and savings. It is a matter of opinion.

Q. Would you say it is profitable to be exempt from taxes? A. No, I would not, because you are a group of





people gathered together for the purpose of saving yourselves some money and you are working against one person who is desirous of making a profit. It is a matter of opinion.

Q. Well, is there a saving in money in being tax-exempt? A. To whom do you mean?

Q. To the business. A. In a private business there would be a saving if you were exempt from taxation, but in a cooperative it is not a business but a group of people gathered for the purpose of trying to save themselves some money in the operation and to provide themselves with certain services.

Q. I want to read to you a concrete example and ask you if you agree with this statement: "Thus an incorporated company which made \$5,000 would pay \$2,000 in taxes and have for distribution to its members \$3,000, and a cooperative association with the same earnings could set aside \$2,000 as a reserve and still be able to pay \$3,000 to its members." Is that a correct statement of the present tax situation, or is it not? A. I don't see that it is a correct statement on the tax situation to have a thing like that read out, a section from someone's article. As far as the \$2,000 put in reserve is concerned, that still belongs to the members of the association and must be allocated to them. The association itself owns nothing.

Q. This is the paragraph -- A. What is it from? Who is supposed to be saying it?

Q. It is in a letter from a gentleman in British Columbia who claims he is an authority on the conversion of private businesses into cooperatives.

THE CHAIRMAN: Is this the document about which you spoke to us earlier?



MR. THORVALDSON: Yes.

THE CHAIRMAN: I will ask you to withdraw it for the time being. The document is not yet public, in the hands of the witness.

THE WITNESS: I would not make a comment on it.

THE CHAIRMAN: Have you been able from your experience to form an idea as to how long it takes to establish a successful cooperative? There have been studies of that kind in England and I was wondering if you could tell us how long you thought it took to establish a successful cooperative.

THE WITNESS: In the consumer or in the marketing branch?

THE CHAIRMAN: I was thinking of the consumer.

THE WITNESS: In the consumer field they are established very rapidly now because money is available and they put it in. The older ones took longer to grow because they were inadequately financed. Under Wartime Prices and Trade Board regulations, however, they have to buy these businesses because they cannot get a granary and put \$100,000 worth of stuff in and start on a shoe string.

THE CHAIRMAN: So the cooperative becomes successful more rapidly than previously?

THE WITNESS: Yes. We had one started the last day of January, 1943 and they have a good year to their credit now.

THE CHAIRMAN: That is somewhat surprising, is it not?

THE WITNESS: Yes. It is probably different from what has happened in the past, but these people put a lot of money in and bought two or three businesses in the town.

THE CHAIRMAN: To what fact do you attribute that





rapid growth of successful cooperatives?

THE WITNESS: The fact that there is far more money available in the hands of people today to buy goods with. I was in that store last winter and one of the girl clerks told me that it was surprising the things country people were buying today. She had been in such stores for years and once in a while a farmer's wife would take home a dozen oranges. Now, every time they come in, they go out with a good many things that were formerly looked upon as luxuries. They have more money now and they have a better standard of living.

BY MR. ARNASON:

Q. Would you say there has been some improvement in managerial methods? A. Yes, I would, and that is becoming more important all the time, especially when you are getting many boys from the armed forces who are trained in bookkeeping. We are getting back some really good men.

THE CHAIRMAN: Do cooperatives thrive better in good times or in bad times?

THE WITNESS: They would be better in good times than in bad times because nothing succeeds like success and the members are all with them. They are very loyal when times are good and might not be so good at supporting them -- as Mr. Arnason likely knows -- when times are not so good.

THE CHAIRMAN: With bad times the necessity for them would be more evident.

THE WITNESS: Yes. I have had nothing to do with them during bad times; I have only been in the movement while times have been good.

THE CHAIRMAN: Would you apply those statements to the other classifications of cooperatives stated in Exhibit 1?

THE WITNESS: Yes, marketing associations, livestock



especially and creameries too are doing a tremendous business now. We have many livestock associations doing a million and a half, a million and three quarters and up to two million dollars' worth of business in the shipping of livestock, because there is a tremendous demand for hogs.

THE CHAIRMAN: That is a war condition?

THE WITNESS: Yes, and our advice has been to build up the structure, pay off debts and get themselves into good shape to stand the strain after the war if business is not good.

THE CHAIRMAN: All business has the same in mind.

THE WITNESS: They should have.

BY MR. LIPSETT:

Q. In these instances you give of the desire of retail merchants to sell, in all these cases merchants went to the local cooperative and asked them to buy? A. I could not answer that; I don't know whether any did or not. All I know is that when the deal was made the cooperative bought him out. Whether he went someplace else first, or whether they went to him, I don't know.

Q. Would it be fair to suggest that a man who had to pay the tax could not compete in price with a cooperative association which would have to pay no tax?

A. I don't think so, because it is only here and there that that sort of thing has happened. There are several hundred other places where such transfers have not taken place, and private business must have carried on there.

Q. In the case of a cooperative, once it is established in accordance with Alberta law no other cooperative can compete within five miles? A. That is not exactly right. It is up to me whether I issue another charter within five miles or not.



Q. But without special permission the law does not allow another cooperative to set up in competition within five miles? A. You don't want them too close together any more than you want other concerns to be so situated.

Q. Has there been any case in which a cooperative has been allowed to set up within five miles? A. Not that I know of.

Q. In the case of the store that was put up for sale, if it had been bought by an independent, a cooperative could put up an opposition store next door to him?

A. I don't get the drift of what you want to say there.

Q. Let us suppose there is a business in a certain place. If it is bought by a cooperative, no competing cooperative, without your permission, can be set up within five miles? A. You mean that where there is already a cooperative we should allow another one to be set up, if another cooperative wanted to buy out a private store?

Q. No. My question is clear, I think. A. I must be dumb.

Q. I am dealing with a man who sells a store, an existing retailer. If he sells to a cooperative, no competing cooperative can be set up against that store without your special permission? A. No. I may explain that. The cooperative that buys him out and sets up will be made up of people in that district and you will not have another gang of people setting up another cooperative. I have never had that question to decide, but if I had I would certainly decide it.

Q. But if the competing producer is an independent retailer who buys that business you can set up a cooperative next door to him? A. If there is no other cooperative in the town and they want to organize one.





Q. Does not that, in addition to the absence of taxation, put the buying cooperative in a very favourable position? A. I don't know that it does.

Q. Another question. When that cooperative takes over an old retail store it sells to all and sundry in the district, whether members or not? A. If they want to keep their skirts clean they had better sign up as members so as to do business according to 4 (p).

Q. But in practice, throughout the province, does not every cooperative retail store sell to anyone who comes to buy? A. If they are to stay in business they would need to do that. I could go and buy something. They have a certain amount of leeway.

Q. Their store is open to sell to everybody?  
A. Certainly.

Q. We know the effect it is having on Dominion revenues. Have you in any way considered the loss there will be to the provincial revenue if they are deprived of this taxation when they resume the levying of income tax at the end of the war? A. I have enough trouble of my own; I leave that to the taxation authorities. Let them worry about it.

Q. You are not in a position to give information on that? A. No.

Q. At any rate, up to date no cooperative has ever had to pay provincial taxation. A. I think probably they have, because I have been appealed to on more than one occasion by cooperatives who thought they were ridden too hard by the provincial Income Tax Department.

Q. When did that happen? A. Last winter.

Q. Has not the province ceased to levy income tax for several years? A. They were still trying to collect



some they had assessed some time ago.

Q. Back taxes? A. Yes.

Q. I am not dealing with back taxes. A. That is all you can deal with so far as provincial income tax is concerned because there is not at present any taxation.

Q. But you have made no estimate of, nor have you given any consideration to, the effect which this enormous increase in cooperative concerns will have on provincial revenues after the war. A. No. That never worried me. Why should I go to all that trouble? I have never worked it out because what the province would get is none of my business.

Q. You have never estimated it on the basis of legislation as it stands at present? A. I do not even know what the provincial legislation is on income tax. So far as income tax is concerned I don't know what it is. The tax was being collected by Ottawa when I took over supervision and therefore I don't know anything about it.

Q. Once they become cooperative, has any income tax or excess profits tax been levied? A. Yes. I know two or three that regularly pay income tax.

Q. Who are they? A. There is Hannah for one.

Q. In what does Hannah differ from the others? A. They are in a town where there are a lot of railroaders. The store was set up by a bunch of farmers, and they figured that if they took these railroaders in as members they would probably run the concern anyway, and so they have done a large business with non-members and, according to 4 (p), pay income tax.

Q. Can you give the figures in that particular case? A. No. I asked them why they did not reorganize and get these other people in but they did not do it.





THE CHAIRMAN: I think we should thank you, Mr. Fitzpatrick, for making this information available to us at this time.

THE WITNESS: Thank you, sir. If there is any further help we can give you through any department of government we shall be glad to put it at your disposal.

BY MR. VAUGHAN:

Q. You say that these railway men were not taken in because it was feared they might run the business. What do you mean? A. I will tell you what they told me in the directors' meeting. If they took them in as full-fledged members, the railroaders were good fellows when it came to attending meetings and the farmers were not and it was felt that after an annual meeting or two all the directors of the cooperatives would be railroaders and the farmers, who had built up the organization from twenty-three years back, would not have any say in running their own show.

THE CHAIRMAN: In other words, the organization would be railroaded?

THE WITNESS: Yes, sir, exactly.

BY MR. VAUGHAN:

Q. What difference would that make if it were just a cooperative store? A. You need to live among the farmers to understand that. When they start something they never want to see it go out of their control. It is like running a municipality or a school district. They become proud of it and do not want anyone to take it away from them.

MR. PARKER: The first formal brief to be presented is that on behalf of the Ellison Milling and Elevator Company Limited. Mr. Ellison is present.



REED C. ELLISON,

Secretary,  
Ellison Milling and Elevator  
Company Limited,  
having been duly sworn testified  
as follows:

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BY MR. PARKER:

Q. What is your official position with the company?

A. I am at the present time secretary of the Ellison Milling and Elevator Company Limited.

Q. How long have you been secretary? A. Since October, 1943.

Q. Prior to that what was your connection, if any, with the Ellison Milling Company? A. I was assistant-secretary prior to that for approximately three years.

Q. And before that were you associated with the company? A. Yes.

Q. In what capacity? A. In the capacity of branch manager at the Vancouver branch.

Q. So you have a considerable number of years of close association with the type of business carried on by this company? A. Since 1933, yes.

Q. Was the brief which you are about to read prepared by yourself? A. Yes.

Q. Entirely by yourself? A. With the assistance of Mr. Young, our auditor.

Q. Your company has a considerable number of shareholders? A. As set out in the brief, we have 110 shareholders.

Q. In the preparation of this brief, and in your coming before this Commission to speak, were the matters here dealt with taken up at a general meeting of shareholders in order that the officials of the company might be properly



instructed as to the wishes and views of its members?

A. No sir, that was not done.

Q. Was it done at a meeting of directors? A. Not a regularly called meeting of directors, but it was discussed with the directors.

Q. Practically all of the directors? A. Yes.

Q. How many have you? A. Seven directors.

Q. Out of the seven how many have either assisted in or approved of this brief which you are about to read?

A. Well, there are four who reside in Canada. The other three are in the United States and they were not consulted in the preparation of the brief.

Q. Are they non-active directors or are they away just temporarily? A. That is right.

Q. They do not take any particular part in the directing of the company's business? A. That is correct, although they are shareholders.

Q. And, I suppose, substantial shareholders?

A. Two of them, yes.

Q. The only reason I ask these questions is to ensure that the Commissioners shall fully understand whose views are being presented to them and just how representative the statements are.

THE CHAIRMAN: Do you feel that you are authorized by your company to make the representations contained in this brief?

THE WITNESS: I do, yes.

MR. PARKER: Then perhaps you will read the brief.

THE CHAIRMAN: We will follow the usual procedure of having the brief read.

MR. PARKER: Yes. If there are particular parts which the witness feels are more or less argumentative, or not very





important, he might skip them. However, he can use his own judgment.

THE WITNESS: Our brief reads as follows:

"Submitted by: The Ellison Milling and Elevator Company Limited of 1301 Second Avenue South, Lethbridge, Alberta, a corporation incorporated under the laws of the province of Alberta in 1906.

"Purpose: To express the company's opinion on the exemption from Income and Excess Profits Taxes granted to cooperatives and mutual organizations, to point out the unfairness of these exemptions to other systems of business and the ultimate effect therefrom if allowed to continue; to urge that corrective legislation be enacted to place all business on as equal a tax basis as possible and to suggest a plan for bringing this into being.

"1. Nature and organization of Company making submission.

11- Nature of business.

The Company carries on a flour milling, feed manufacturing and grain merchandising business consisting of:

- (a) A flour mill at Lethbridge with a daily capacity of 870 barrels of wheat flour.
- (b) A feed chopping and mixing plant with a daily capacity of 150 tons.
- (c) Distributing warehouses at Calgary, in Alberta and Vancouver and Nelson in British Columbia.
- (d) Eighteen licenced country grain elevators in southern Alberta and two grain elevators at Lethbridge with a total storage capacity of 1,952,500 bushels.



"The markets for the Company's manufactured goods consist of nearly every province in the Dominion plus an established export trade to the United Kingdom and at times to Russia and China, with the greatest percentage of domestic sales being made in Alberta and British Columbia.

"The grain business consists of the buying of grain from producers and the handling, storing and selling of same. In this department the competition is from the Alberta Wheat Pool and various large grain corporations. The Company meets the Alberta Wheat Pool at fourteen of the Company's sixteen country operational points and therefore is vitally concerned with the Pool as a competitor.

"2- Organization.

"The Company was originally organized in 1902 at Raymond, Alberta and then incorporated as the Ellison Milling and Elevator Company Limited in 1906 under the Companies Act of the Province of Alberta.

"The head office of the Company is located at Lethbridge, Alberta.

"The Company has an issued share capital of \$425,200 which is represented by 4,252 common shares of \$100 par value and these are held by 110 shareholders. The stock is not quoted or traded on any stock exchange.

"The Company has no subsidiaries and no interlocking financial connections with any other company or group. It is entirely independent of any outside capital except bank accommodations; and is a relatively small business, evidenced by the above recited facts.

"II. Points relative to the purpose of this submission.

(This brief from this point on will deal with the directives given to the Royal Commission on





Co-operatives as set out in the minutes of meeting of the Privy Council, approved by his Excellency the Governor General on the 16th November 1944)

"1- Directive 1.(a) 'the present position of co-operatives in the matter of the application thereto of the Income War Tax Act and the Excess Profits Tax Act.'

"(a) We respectfully contend that the Wheat Pools operating in the Prairie Provinces do not qualify for exemption from taxation under Section 4 (p) of the Income War Tax Act or any other section according to their organization and their method of operation at present and during the past several years.

"Section 4(p) of the Act states that certain cooperative companies and associations are exempt from taxation provided they are 'organized and operated on a cooperative basis, which organizations -- (a) Market the products of members or shareholders of such cooperative organizations under an obligation to pay them the proceeds from the sales on the basis of quantity and quality, less necessary reserves and expenses.'

"It is general information that the Wheat Pools do not operate on a true cooperative basis and they do not handle grain from members or shareholders with any obligation to pay them the proceeds from the sales on the basis of quantity and quality, etc.

"In addition to these qualifying provisions, the Act sets out another provision which is mandatory for cooperative organization to keep within before it is entitled to exemption from the charging provisions of the Act. This is, that trading with non-members cannot exceed 20 per cent of the total business done with members. Up until income tax



assessments were made against them, the Wheat Pools had in no way attempted to limit their dealings with non-members to 16-2/3 per cent of their total; and while we have no actual figures to submit in proof, it is a fair conclusion from the nature of their advertising, solicitation and method of operation that more than 16-2/3 per cent of their business had been done since 1932 with non-members and no distinction had been made between members and non-members.

"We therefore feel that the Income Tax Division of the Department of National Revenue has failed in its duty to collect income taxes as due from the Wheat Pools on the same basis as has been done with other types of business enterprise. This failure has allowed cooperatives to build up large cash reserves, especially during war years when profits have been relatively high.

"(b) We further contend that the Wheat Pools operating in the three Prairie Provinces are not exempt from the provisions of the Excess Profits Tax Act on the same grounds and for the same reasons as they are not exempt from the Income War Tax Act.

"Likewise we feel that the Income Tax Division has neglected to collect Excess Profits Taxes from the Wheat Pools.

"(c) Proper steps should therefore be taken to force collection of both Income and Excess Profits Taxes since 1938 to help correct the discrimination and to take away the great financial advantage which has accrued to cooperatives during the lifetime of both acts and especially during the war years when rates of taxation have been so high; also to see that this type of business enterprise contributes its share to the financial support of the





Government according to the rates set out in the Act.

"2- Directive 1 (b) 'the organization and business methods and operations of the said cooperatives as well as any other matters relevant to the question of the application of income and excess profits tax measures thereto.'

"(Our comments on this directive deal again with the Wheat Pools, particularly the Alberta Wheat Pool, with whom we are in direct competition and about whom we have a better knowledge of their business methods and mode of operation than with any other alleged cooperatives.)

"(a) We respectfully point out that the Wheat Pools of Western Canada are separate entities and are incorporated much the same as any corporation. The Alberta Wheat Pool is divided into two sections, one of which is incorporated under a private charter and the other section, the Alberta Pool Elevators Ltd., incorporated with share capital under the Companies Act of the Province of Alberta. In addition to this the Alberta Wheat Pool owns and controls along with the Manitoba Pool Elevators Ltd. and the Saskatchewan Co-operative Producers Limited at least three subsidiary companies that are organized and incorporated as corporations with share capital from which no income and excess profits have been collected by our government out of their operating profits, as far as we have been able to determine. In the case of two of these subsidiary companies, they are engaged in the insurance business in competition with other insurance companies and they have operated at a profit during most years of their lifetime. Such an organizational set-up could quite conceivably be extended into every field of endeavour and the parent company posing as a cooperative could own and control an





unlimited number of corporations or joint stock companies which could carry on other lines of business and be free from taxation by reason of being tied by share capital to an alleged cooperative.

"These conditions of organization clearly point to the fact that the wheat pools are not true cooperatives.

"(b) As to method of operation, we contend that the Wheat Pools at least since early '30s, have conducted business as principals and not as agents for their members. They operate the same as any corporate or joint stock grain company carrying on the same type of business. They purchase grain outright from patrons, members and non-members, and settle for same, without any contractual obligation to return to the grower customer any saving or profit which might accrue from the buying, selling and handling of the grain; and also without any possibility of forcing the customer to return a part of the purchase price paid for the grain at time of settlement should the purchase, handling and sale of the grain result in a loss instead of a profit.

"A member of a cooperative is very much like a shareholder in a joint stock company, except in most cases he has contributed little or perhaps nothing to the cooperative. When he delivers his farm produce he is paid for it just as a customer of a corporation is paid. It is true he may be paid a bonus but he cannot enforce payment of any realized profit as only a majority of members or the Board of Directors make decisions on such matters and he therefore may never receive a bonus even though profits have been made out of his produce. A member of a cooperative cannot claim the undistributed profits of his organization as his own any more than a shareholder can lay claim to his share of the undistributed profits of a corporation if the majority



of shareholders vote not to make a distribution thereof. Any bonus which may be paid by a cooperative is similar to a dividend paid to a shareholder in a corporation.

"We believe that in their early history, the Wheat Pools operated more on true cooperative principles than since their financial difficulties of the early '30s. Since then their organization and method of operation has been so altered as to leave them with only a semblance of a co-operative character. It was at this time that members of the Pools were asked to bear their share of the indebtedness of their organizations but this was countermanded when it was realized that such action was resulting in a large percentage of members dealing with competitors.

"Previous to 1940 when the Pools commenced payment of patronage dividends, membership meant little or nothing to the average grower who patronized the Pool as no dividends or distribution of moneys received from operations were paid back to members for several years.

"The Wheat Pools do not keep the identity of any customer's grain unless requested to do so by the customer and this service is available for growers from all engaged in grain trade.

"Today, the Wheat Pools purchase and handle wheat as agents of the Canadian Wheat Board exactly on the same arrangement as all other grain companies. They exercise no discretion as to the sale of same and are therefore not able to benefit their members by more advantageous sales than competitors.

"We therefore wish to point out again that the method of operation of the Wheat Pools preclude them from being true cooperatives, which fact makes them ineligible for exemption from taxation under the present wording of the





Income War Tax Act.

"3. Directive 1(c) 'The comparative position in relation to taxation under the said acts of persons engaged in any line of business in direct competition with cooperatives.'

"(a) From our previous arguments that the Wheat Pools of Western Canada do not qualify for exemption from taxation under the Income War Tax Act and the Excess Profits Tax Act we would admit that the comparative position in relation to taxation of the Pools with other types of business enterprise such as corporations would be about the same providing collection of tax was made from them.

"However, in comparing the position in relation to taxation between corporations and cooperatives or mutual companies according to actual experience wherein corporations have been subjected to taxation since the inauguration of the Income War Tax Act in 1917 at rates ranging from 8 per cent of net income up to a high of 18 per cent in 1939 and to the almost confiscatory provisions of the Excess Profits Tax Act at rates up to 100 per cent which has made for a combined tax rate of from 40 per cent to 80 per cent of total net earnings, and whereas cooperatives including the Wheat Pools have never paid one cent of tax under either of the acts one must only know the facts to understand that a gross injustice has been done to the corporations or joint stock companies. This is so evident that there cannot exist in the mind of any person with a sense of right and wrong a doubt as to the burning discrimination which has been allowed to exist and of the favourable position which the cooperative organizations now enjoy.

"Coupled with this is the added fact that under the



Dominion Law the profits of corporation or joint stock companies are also taxed again in the hands of the shareholders when any distribution of the remaining profits is made after taxes are paid. This is double taxation and makes the discrimination more onerous.

"In analyzing the comparative situation of the co-operatives versus private enterprise we fail to see any logical reason for making any distinction between the taxation of these systems of conducting business. The only reason is based on the principle that one cannot make a profit out of trading with oneself and that in fact co-operatives have no taxable income. In cases where this is an actual condition of trading, then we agree with the principle and with the decisions of the courts dealing with it. But we certainly do not have such a condition in most cooperatives today and especially not in the Wheat Pools.

"Then by what token of justice and in what type or kind of democracy can exemption be excused, much less justified? But if there be excuse for such then by the same logic and token the cooperatives should be extended exemption from the property tax and the license tax. There would at least be a chain of consistency in the exemptions. On a large scale, profits pretended as belonging to the farm producer plus large sums of money furnished in some instances by government, have been used and are now being used in the long, slow and largely unobserved process to liquidate into ultimate ruin private industry in competition with the cooperative, while it grows day by day stronger and becomes not only an economic but a political power with which to be reckoned. In fact, it approaches a political monopoly, with government condoning if not



actually subsidizing and accelerating the process of transformation from individual enterprise to the community form of economics through preferment by tax exemption with the burden of taxes placed squarely on the shoulders of private enterprise.

"We are not arguing that cooperatives should be eliminated as we believe they have a definite place in our national economy and in our Canadian way of life; and have undoubtedly made some fine contributions to Canadian agriculture etc.; but if they are to be fair and worthy of continuation, they should ask no privileges they are unwilling that a corporation should enjoy; they must be a business and social and not a political movement and avoid any attempt to become an economic and political monopoly. Besides their economic purpose, it is their solemn duty and responsibility as groups of citizens to contribute their share to the maintenance of government and the defence of our country and its institutions and our democracy.

"Let us examine some figures taken from the records of our Company keeping in view that it is a corporation of moderately small proportions. The figures will show what the Company has contributed in dominion taxation over a period of the six war years to the maintenance of government and the defence of our country and should be contrasted with a cooperative of comparable size or larger which may have transacted approximately the same volume of business during this period or several times the volume, which condition matters not as the cooperative paid no tax whatever whether it was large or small while our Company remitted as follows:





Year		<u>% of Income &amp; Excess Profits Taxes paid to net Taxable Profits</u>
1939		15.00%
1940		23.82%
1941		33.50%
1942		50.29
	Less post-war rebate	<u>.71</u> 49.58%
1943		46.59
	Less post-war rebate	<u>2.13</u> 44.44%
1944	To Income Tax Dept.	34.85
	To C.P.S.C. (#)	<u>25.94</u> 60.79%
	No post-war rebate in 1944	
	Total .....	<u>227.13%</u>

Converted to dollars this amounts to the following:

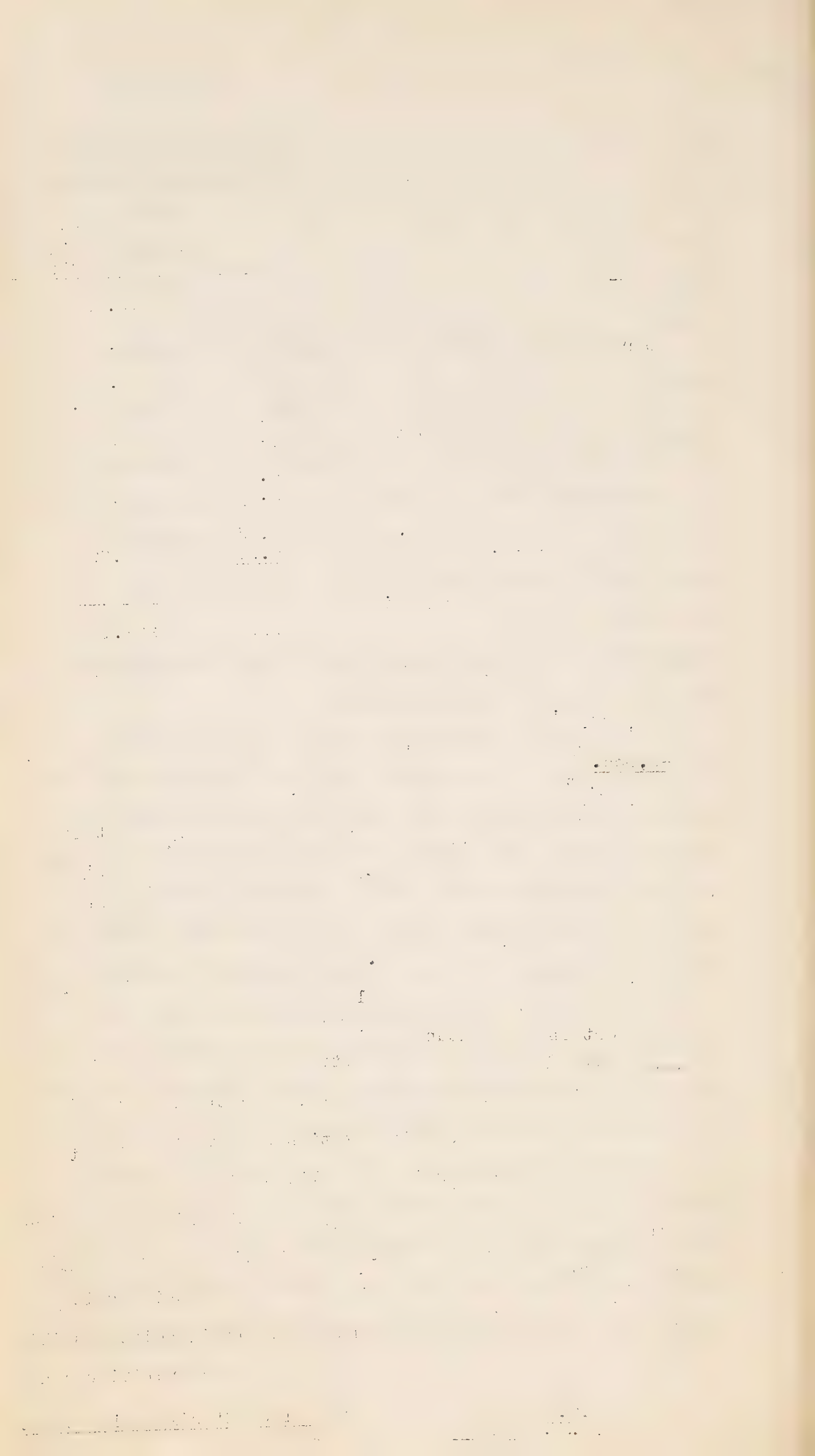
257,187.74.

-2,836.67 less anticipated post-war refund for 1942 & 43.

254,351.07 Total Net Taxes Paid.

"It is of course very easy to see just what it would mean to our Company if we had been favoured with tax exemption during these years the same as our competitors, the Wheat Pools, have been. It would have given the Company \$254,000 in cash reserves plus an additional saving in interest on this amount during this period which would have placed the Company in a very strong financial position considering its size. The facts are, of course, that this money has been paid out in taxation whereas the Wheat Pools and other cooperatives in other lines of endeavour have been privileged to build up just this kind of a liquid position in proportion to their size. Therein lies the comparative position of persons engaged in any line of business in direct competition with cooperatives. It is quite possible that corporations faced with this kind of competition can

(#) C.P.S.C. means the Commodity Prices Stabilization Corp.



and perhaps will continue to survive during years of good business and relatively high profits as they have no current need of reserves under such conditions but when a period of poor business comes, which it surely will, then the corporations will require reserves which they have not been able to build up because of high taxation and they will be unable to weather a financial storm in competition with cooperatives that have been subsidized by tax exemption. This is the time when the comparative position will show up in gigantic proportions and will result in wholesale insolvencies and bankruptcies to private enterprise.

"In addition to the glaring example of unfair competition as cited above we would like to point out still another sinister case pertaining to all those companies engaged in the flour milling industry in Canada, as well as a few other industries. This is the elimination by government order-in-council of any possible chance to participate in the 20 per cent post-war refund of Excess Profits Taxes paid by these corporations over 116-2/3 per cent of their standard profits which refund is provided to taxpayers in the Excess Profits Tax Act. This additional discrimination was applied to our Company commencing with the fiscal year ending in 1944. This was accomplished by forcing us along with the other milling companies of Canada to sign a contract agreeing to rebate all moneys paid to us as a drawback on wheat ground for domestic use which moneys contributed to increasing our profits over 116-2/3 per cent of our standard profits; and was done under the guise that the flour mills were benefiting by increased export business financed, in part, out of mutual aid funds.

"This condition is cited here to impress that some few private enterprises are made to suffer additional





discriminations in taxation which carries the unfairness that much further as between cooperatives who have escaped income taxation etc. and those corporations who happen to be unfortunate enough to be in an industry that has been penalized by the above mentioned situation.

"Thus, Canada's tax system is filled with injustices and discriminations. Corporations have become the prey of tax collectors; they are costumed for the event in the keeping of records and their accessibility. Their income is taxed and their dividends re-taxed and thus their profits suffer double taxation. Their moral and legal right of existence is oftentimes questioned and threatened. The tax system needs some reform on the fundamental basis of right and wrong, that injustices and wrongs shall not undermine and destroy our freedom of choice to conduct business by any legal method and shall not lessen our loyalty and patriotism and respect for government. We thus urge that corrective legislation be enacted to place all business on as equal a taxation basis as possible.

"(b) Suggested Plan.

"In arriving at a position where we feel capable of making any suggestion for corrective legislation we have considered the many implications and complexities of the problem at hand which are now involved or may be involved by changes.

"However two of these stand out in our minds. These are, first, the need for our government to be supplied with money to finance the many demands placed upon it and particularly the demands for prosecution of the war; and second, the publicly announced course which the Wheat Pools and perhaps other cooperatives would follow were they to be



subjected to Income War Tax Act and the Excess Profits Tax Act. This course of action is to so regulate their business that they would not have any taxable profit at the end of their fiscal year. We therefore arrive at this point in dealing with the taxation of cooperatives and mutual companies:

- i. Exempt them from the payment of Income and Excess Profits taxes for the future by amending Section 4 (p) of the Income War Tax Act so there can be no question of their exemption.
- ii. Give them the right to pay patronage dividends to their patrons how and when they choose, which dividends would not be taxable in the hands of recipients.
- iii. Make them subject to a 'cooperative' or 'turnover' or 'sales tax' on their yearly sales or dollar volume of business by amending the Special War Revenue Tax Act. The rate of such a tax would be fixed after careful study and having in mind that it should cost a cooperative as near as possible the same as if it were subject to the Income War Tax Act and the Excess Profits Tax Act before provision for the payment of patronage dividends.

"In dealing with the taxation of corporations or joint stock companies we recommend the following:

- i. Leave them subject to the Income and Excess Profits Tax Acts after providing a more lenient and equitable basis of determining the standard profit of a company.
- ii. Do not impose any additional taxes on them.
- iii. Exempt the dividends paid by a corporation in the hands of the shareholders thus eliminating



double taxation on corporate profits by amending the Income Tax Act etc. just the same as dividends received from one Canadian corporation are now exempt from taxation in the hands of the recipient corporation.

iv. Give corporations the right to pay patronage dividends to their customers which dividends would not be taxable in the hands of the recipient.

Patronage dividends would have to be paid out of surplus and would not be considered as an operating expense.

"We believe that if these proposals were enacted perhaps with some minor changes or substitutions that it would eliminate in a large measure the present inequalities between cooperatives and private enterprise concerning taxation and would also distribute the nations tax load on all business and would increase the revenue of the Dominion treasury.

"(c) If our suggested plan is not feasible then we contend that cooperatives must be placed on the same taxation basis as corporations by some other method or combination of methods.

"In this regard we would recommend that the same system which now prevails in Great Britain and which was decided upon back in 1933 be adopted as the solution of this problem in Canada. The English law provides that both joint stock companies and cooperatives are exempt from income and excess profits taxes on profits paid out to shareholders and/or members; that these profits are taxable in the hands of the recipient; and that any profit left in the business and transferred to surplus or undivided profit account by





either cooperatives or joint stock companies is subject to income and excess profits taxes.

"(d) We also contend and urge that, whatever course of action is taken by the Commission, collection from cooperatives of Income and Excess Profits Taxes on profits realized since commencement of war must be enforced in order to wipe out the unfair financial advantage which they have been allowed to build up during this time.

"Respectfully submitted,

Ellison Milling and Elevator  
Company Limited."

Documents filed with brief:

2 typewritten copies of - "Summary of Brief submitted by  
Ellison Milling and Elevator Co."

The Commission took recess until 2.15 p. m.

.....

The Commission resumed at 2.15 p. m.

BY MR. PARKER:

Q. I just want to ask a few questions by way perhaps of clarifying or explaining a little further some of the points you have dealt with, and possibly we might go more or less in the reverse order. Let us take the last part of your brief. As I understand your statement, the two kinds of company, limited and cooperative, are to all intents and purposes the same and therefore should be taxed on the same basis. Is that a fair statement? A. We in our recommendation or suggested plan propose that a distinction be made between the method of taxing cooperatives and the method employed to tax corporations.

Q. If the two set-ups are much the same, as I think you have said in your brief, and therefore should bear taxation on the same basis, why would it be necessary to make changes in the law at all? Why, if there were not a



difference between the two? A. There would not necessarily be a change to amend the present Income Tax Act except to eliminate Section 4 (p) of that Act so that no cooperatives or mutual trading companies would be able to claim exemption under that section.

Q. That is what I had in mind. Is it your suggestion that if you repealed section 4 (p), that would more or less clear the situation, so that cooperatives and the ordinary companies being more or less indistinguishable -- as I understand your argument -- the incidence of the tax would apply to both? A. That is correct, except that we made a different recommendation, for this reason, that if cooperatives -- speaking of the wheat pools in particular -- were made subject to section 4 (p), that is to say, if they were not exempt under that section and collection from them were enforced by the Government, they they have already announced their course of action.

Q. I was coming to that. A. That is, that they will so regulate their business as not to show a profit or a surplus at the end of the year. That in effect would force corporations in competition with them to do likewise. The corporations, then, would not show any operating profit and therefore the Government would not have any revenue from that source.

THE CHAIRMAN: Mr. Ellison, the apparent inconsistency of your proposal to tax them and to provide a plan for not taxing them is explained, I presume, by the fact that the second suggestion is merely subsidiary.

THE WITNESS: It is an alternative suggestion of adopting practice, yes.

BY MR. ELLIOTT:

Q. May I get one point clearly. Is it your position





that the cooperatives and the corporations are substantially the same, or are they, in your view, to some extent different? A. To some extent, they are different, yes.

However, we have argued in our brief and we still contend that as far as the operations of the wheat pools are concerned they are substantially the same as any corporate company carrying on the grain business in western Canada.

BY MR. PARKER:

Q. Are their methods of operating the same, do you contend? A. We have so contended, yes.

Q. You make that general statement, but on what grounds do you say that? I was under the impression that there were certain differences. A. As far as their operations are concerned, that is covered in the brief. They carry on business as principals, not as agents for their members or patrons.

Q. You are speaking of the Alberta Wheat Pool?

A. I am speaking of the Alberta Wheat Pool in particular. Any member wishing to sell grain to them takes the grain into the elevator and that grain is bought by the Alberta Wheat Pool and settled for the same as if the producer took the grain to a private or incorporated company.

Q. Stop there for a moment. I have no doubt that in due course we shall hear from the Alberta Wheat Pool. Let us assume that you are wrong about that, that they do not at the present time, at any rate, buy wheat at all but merely handle it on behalf of those who deliver. Would that make a difference in your argument? There would be a considerable difference between your method of operating and the independent companies' method? Would there not -- provided they were not buying and re-selling, but merely



handling the product on behalf of the grower. That would make a distinction between the two? A. Yes, that would.

Q. So that when you say they are much alike it is on the assumption that they buy and sell in much the same manner as the independents buy and sell? A. That is correct.

Q. Let us go back to the beginning of the brief for a moment. At the bottom of page one you state that there are eighteen licensed country grain elevators in southern Alberta and two grain elevators at Lethbridge, with a storage capacity of so many bushels. They do business with non-members or only with members? A. I am pointing out there the nature of our operations. That is our operation.

Q. It is under that heading, and you state among other things -- A. That our company owns and operated eighteen country elevators. Of course, we are open to do business with the public at large. We do business with any producer who wishes to come to us.

Q. As a matter of choice, or are you compelled by law to do it? A. We are compelled by law, under the Canada Grain Act, to accept deliveries from any grower.

Q. And so are the cooperatives? A. Yes.

Q. So that you are exactly the same in that respect? A. I understand so, yes.

Q. Turn to page two. The grain business consists of the buying of grain from producers, and handling, storing and selling the same. In this department competition is from the Alberta Wheat Pools and various large grain corporations. You are speaking of your competitors there? A. Yes.

Q. And you say that one of your competitors is one of



the Alberta Wheat Pool. Do you not have severe competition from independent companies as well? A. Yes, and various large grain corporations.

Q. In what way is your competition greater in respect of the Wheat Pool than in respect of the other independents? A. In two respects. In the first place, we in our small way, meet them, or they meet us, in fourteen out of sixteen points where we operate, whereas no other single grain company meet us, or do we meet them, at so many points.

Q. But you do meet them at a considerable number of points? A. Yes.

Q. And at those points in which you do find competition, in what way is that competition more injurious to you, or rather in what way is the competition of the Alberta Wheat Pool more injurious to you than the competition you meet from other independents? A. In this way, that the Alberta Wheat Pool being exempt, that is, having taken exemption from income tax or excess profits tax, have been able to promise or to pay back in some cases what they term patronage dividends to their patrons who have delivered grain to them during the year. It is my understanding that under the law the income tax department will not allow a corporation or a private grain company to pay these patronage dividends back to the grower and still charge it to operating expense, so that in that respect our competition is much more keen from the pools than it is from the rest of the grain trade or the other large concerns.

Q. The competition is greater because of their exemption from income tax. Is that what makes the competition keener? A. That is what it amounts to.





THE CHAIRMAN: Payment of dividends is the crux?

THE WITNESS: I can explain further in that regard if you wish. Since this question came to the fore, of course, the wheat pools, feeling that there was a chance that they might be taxed on profits or surplus which accrued to them as a result of their operations, have put into effect this year an increased purchase price over and above the Wheat Board minimum price, and that of course will be in effect a patronage dividend which the grower is getting as he delivers or sells his grain, rather than waiting until the end of the year to see what the outcome of the year's operations will be, and then refunding in the way of a patronage dividend. Then, too, in any competition of that nature, it is necessary for our company to meet that because, as you can readily understand, a grower is not going to come into one of our elevators and accept two, or three or four cents a bushel less for his wheat than he will receive from another elevator across the road, and therefore we must adjust our price to meet the competition set by any others, whether it be the wheat pool or whether it be a privately owned company.

BY MR. PARKER:

Q. Perhaps I should ask at this stage this question: If what you state is true, it would be a simple matter, would it not, for you to overcome that competition by incorporating a cooperative society of your own or transferring from your present set-up to a cooperative association so as to be then on an even footing with them. Could that be done satisfactorily, or is it practicable to do that, or is it simply visionary? A. After making some study of this problem I have felt that it would eventually be necessary for us to do that very thing if we are to continue to compete with non-taxpaying companies.



Q. Would that be a good thing for the community and the general public at large, in your opinion? Is there anything wrong in doing that? A. Only this, that we feel it would tend to destroy competition and the choice which we should all enjoy here in this country of being willing or able to do business as we wish according to the legal system that is adopted.

Q. I realize that; but do you not agree that most business concerns, whether ordinary joint stock companies, or any other kind, do business with the idea of doing the best for their members or shareholders, as the case may be? Is not that the guiding principle, or do you agree with that? A. I don't think that there is any doubt that most businesses are started with the idea in mind of making a profit or an amount over expenses.

Q. Or some acquisition which is of value to them, the equivalent of profits. They hope to get some advantage? A. Yes.

Q. I won't pursue that too far, but if that is the guiding principle, what objection is there on the part of a company such as yours to having its holdings, through proper channels, turned into a cooperative association? What is wrong with it so far as the good of the community or of the shareholders is concerned -- or of anybody else? A. I answer that by stating that eventually that would eliminate competition, and we feel that competition is necessary. I believe that those who organize and sponsor the cooperative way of doing business are also of the opinion that it is necessary to have competition. Furthermore, as to that, it may be that we could not get permission from Mr. Fitzpatrick's department to set up a cooperative





organization in the same community or locality in which another cooperative is now operating.

Q. That is the question I was exploring, whether it was possible or practical, whether it was a feasible thing to do.

BY MR. ELLIOTT:

Q. Mr. Ellison, have you anything to say as to how the interests of your shareholders might be affected by such a reorganization? A. I feel that the interests of the shareholders of the company would naturally be jeopardized because we have very few as compared with the total number of customers with whom we do business. But that might not be serious from the long-range viewpoint. After all, there are numerous companies coming and going, and some of them make a success in business and some don't.

BY MR. PARKER:

Q. From the standpoint of public interest, you have pointed out in your brief the phraseology of the order in council which is directing the Commission, and you will notice in it that they require information that will lead to something which is best in the public interest?

A. Yes.

Q. It was from that standpoint only that I was asking if there is anything against the public interest to have a limited company through the proper channel, made into a cooperative association. I can see that it might affect the shareholders of the present company, but do you think it might be necessary to secure the greater good of the greater number? A. That is possible.

BY MR. VAUGHAN:

Q. On the question of public interest, Mr. Ellison, you say that taxation has been lost to the Government.



Would that be something in the public interest?

BY MR. PARKER:

Q. What do you say to that? A. Definitely so.

I think we all have to admit that it is necessary to provide money for governments to function, and naturally, if all business were converted to the cooperative method or system, then under our present arrangement the income and excess profits taxes which are being paid into the Government would be lost or would be eliminated, and other methods or sources of taxation would have to be found to replace that revenue.

THE CHAIRMAN: And to that extent the public interest would be affected?

THE WITNESS: Definitely so.

BY MR. ARNASON:

Q. With further reference to the question of public interest, I understood you to say that the pools had taken the initiative in increasing the price payable to the grower by two cents a bushel and that in the ordinary course of competition it would be necessary for your company to follow suit in order to retain your customers. Since we are discussing the matter of public interest I would like your view on this: If the purchasing power, that is, if the income of the producers of grain were thereby increased by two cents a bushel, what would you say about the public interest involved as far as that is concerned, due to the fact that it might be argued that this extra two cents a bushel, thereby increasing their income, would make it possible for these producers to pay more individually in income tax? What would be your view, as far as the public interest is concerned, with reference to that situation? I realize what your views are so far as it would affect the



interests of your company, the shareholders. But we are talking about the public interest. Which is more important?

A. There is no question but what the grower would gain, and does gain when he is paid more for his produce.

However, corporations could also afford to pay that extra amount provided they were also free from taxation; so that that would balance the extra amount given to the grower, and naturally, if we had not been liable for income tax during this period, we could very well have paid patronage dividends back to our grower customers to the same extent as any other system of business in the pools. In other words, we feel that we can give the grower just as good service in every way possible, and just as much for his produce in our method of operation, as the cooperative system can. Carrying that one step further, in answer to your question about the effect of the payment of income tax by individual growers were they to receive two cents a bushel more, or any amount more than what would naturally be paid to them, that in fact may be the case, that they would pay extra income tax because they would have additional income. In actual operation, however, it does not seem to work that way because of the laxity of the present Income Tax Department in collecting taxation from individual farmers and growers.

BY MR. PARKER:

Q. That is scarcely an argument with the departmental officials here. A. Perhaps it is not necessarily the fault of the department or of the present method of collecting from individual farmers. Perhaps the method of record keeping has a lot to do with that. In other words, there are apparently ways and means of covering up extra





income which they may get from time to time during the course of the year, more so in the case of an operation as an individual farmer, than it would be to get that tax through a company organized to do business.

Q. I do not think we will pursue that further. Turn to page three of your document. You state that your company is a relatively small one. You do not attach financial statements to your brief. Could you have these prepared and sent to the Registrar? The Commission would like to see your financial statement. Would you undertake to do that? A. Yes.

Q. Will you let us have ten copies? It would be convenient to have a number of copies. Will you do that? A. Yes; for what years?

Q. Two or three years would be sufficient.

THE CHAIRMAN: Since 1939.

MR. PARKER: Since 1939 then.

THE WITNESS: Balance sheet and statement of profit and loss?

BY MR. PARKER:

Q. Yes. A. Very well.

Q. Go on to the next page. A. By way of explanation there, we consider our business a relatively small one, comparing it with most other businesses in the same line, and not in comparison with the small individual who is operating.

Q. I understand that. A. Or a grocery store.

Q. Approximately what is your annual turnover -- half a million, ten millions, a hundred thousand? What is the amount of business your company does? A. The total amount would be between a million and a half a year



and, say, three millions at the highest.

Q. Now will you go on to the next page. You make a rather broad statement: "It is general information that the wheat pools do not operate on a true cooperative basis." These expressions such as "general information", "common knowledge", and so on are not particularly helpful. How general is that information, and what do you mean by that? Possibly you know it and others know it, but I am afraid there are still others who either do not know it or do not concede it. A. We will qualify that by stating, shall we say, "among a considerable number of growers who are producing grain in this country and delivering to elevators and also to those who are engaged in the grain trade."

Q. Let us see if we can be more specific. Are you suggesting that there are a considerable number of the members of the various wheat pools who are informed, or who know, or who admit that the wheat pools are not operating on a true cooperative basis? A. No.

Q. You would exclude them? A. Most of them, some of them.

Q. Let us take their counterpart, the shareholders of companies like yours. Most of them concede that your statement is true? A. Yes.

Q. Then we have one group included and the other excluded. Take all the rest. How many of them agree with your statement? A. Not very many, because I don't believe that question has been thought out in the minds of the general public.

Q. What you mean, then, is that is generally accepted by the ordinary shareholders of independent companies? A. And customers, I would say.





Q. It is accepted by them that the wheat pools are not operating on a true cooperative basis. That is what your statement means? A. Yes.

Q. Let us go a step further. What do you mean by operating on a true cooperative basis? What do you mean by that? What is a "true cooperative", and what do you want the Commission to understand by that? A. A true cooperative I would define in these terms: A group who are organized and who operate their business in such a way that they confine their activities to their own field of endeavour; each member of which cooperative would be entitled to his share of any profit or saving effected by handling the produce of the members or the Board of Directors voted to make disbursements of that which was earned.

Q. Yes. Anything else? A. And that each member should have an equal voice in the way the business is conducted.

Q. Is that complete? A. Going further, I would say that in the true cooperative, each member that belongs to it should have a financial responsibility to pay back any excess which he may have received from the operation of the association, provided the operations did not give a profit or an operating margin.

Q. I want to be fair with you, and I realize that it is a rather difficult question that I put to you, and one which it is not so easy to answer, as everyone admits. What I want to know is this: Is this answer that you have given me an answer made on the spur of the moment, or is it your considered, thought-out idea of what constitutes operating on a true cooperative basis? A. That is an answer, I admit, that has been given to you without very much thought.



Q. If you wrote that out, or if you saw it in writing, you might want to edit it in respect of certain words. You might want to change its phraseology. But it substantially expresses your view, does it? A. Yes.

THE CHAIRMAN: You are a very brave man to have attempted it, Mr. Ellison.

THE WITNESS: I admit it is hard to define a true cooperative.

BY MR. PARKER:

Q. Are you in a position to state of your own knowledge what you have stated in the second sentence of the paragraph referring to wheat pools, namely, that "they do not handle grain from members or shareholders with any obligation to pay them the proceeds from the sales on the basis of quantity and quality, etc." Do you know that it is so, or do you not? A. Of my own knowledge I believe that to be the fact.

Q. That is what I want to know, whether you know it to be a fact or whether it is something which you believe to be a fact and in regard to which you may conceivably be wrong. A. I may be wrong, but to my own knowledge I believe it.

Q. You are not very certain that that statement is true? A. Yes.

Q. At the time you were preparing the brief did you take the trouble to look at the terms under which the wheat pools were handling grain? A. I have never read their member contract, if they have one. I presume they have. They must have some written memorandum as evidence of becoming a member, but I have never read their contract. I am going on the wording of their grain contracts when they make



a settlement for their purchases.

Q. If I may use the words of the Chairman, you are a pretty courageous man to make that statement if you have not read the documents, aren't you? A. Yes.

Q. Go on to the next paragraph. I quote the following: "Up until income tax assessments were made against them, the wheat pools had in no way attempted to limit their dealings with non-members to 16-2/3 per cent of their total." Do you know that any better than the last statement? A. No. We admit that because in what follows we say so.

Q. I continue the quotation: "and while we have no actual figures to submit in proof, it is a fair conclusion from the nature of their advertising, solicitation and method of operatin that more than 16-2/3 per cent of their business had been done since 1932 with non-members and no distinction had been made between members and non-members." Will you point out to the Commission where we can obtain samples of advertising, solicitations or methods of operation from which they would be justified in drawing such an inference? A. Perhaps that may be submitted in evidence by the pools.

Q. Possibly, but the pools may never come before us at all and we may have to find out for ourselves. You apparently have seen some of that sort of thing otherwise you would not be making that statement, I presume. Have you? A. We have never seen any percentage worked out and supposedly coming from them as official or authorize<sup>d</sup> information.

Q. Just look for a moment at what you state in your brief: "While we have no actual figures to submit in





proof, it is a fair conclusion from the nature of their advertising, solicitation and method of operation" and so on. How can it be a fair conclusion in your mind, to say nothing of its being a fair conclusion for the Commissioners to draw, if you have not even seen the advertising, solicitations and so forth from which you profess to draw the conclusions here stated? A. Well --

Q. Perhaps you went a little too far? A. That is an unfair statement.

Q. My only purpose in bringing it to your attention is to suggest to the Commissioners, when they come to consider their decision, how much reliance is to be placed in such statements. A. We are basing that statement on the fact that the pools invite, encourage and solicit growers to deliver their grain to the pool elevators regardless of whether they are members or not. In other words, they are welcome whether they sign a membership pledge or do not.

Q. Anyway, your conclusion is drawn from that knowledge -- or lack of knowledge -- that 16-2/3 per cent of their business has been done since 1932 with non-members and that no distinction has been made between members and non-members. Are you prepared to say that as a fact, or, again, is it only argument? A. No distinction in the matter of the treatment that they receive. There would be a distinction in the matter of their voting as members of the cooperative. A non-member, I presume, would not be privileged to go to a meeting or vote for the election of a delegate to be sent to their meeting.

Q. It is more a matter of argument than a statement of fact, and the Commission should so regard it.

THE CHAIRMAN: It is a conclusion which he draws.



BY MR. PARKER:

Q. Perhaps some comment should be made with reference to page five where you begin the paragraph by saying: "Likewise we feel that the Income Tax Division ..... " so and so. That is a mere matter of argument in which your opinion may or may not be sound. Is that correct?

A. You mean where we say that we feel that the Income Tax Division has failed?

Q. Yes. It comes under (b). A. Yes. That is definitely just our feeling. We are not a court of law to decide whether they are taxable or not, but it is our contention that they are.

Q. Let us go on to the next page: "We respectfully point out that the wheat pools of western Canada are separate legal entities and are incorporated much the same as any corporation." Any ordinary limited company, I take it, is what you mean? A. Yes.

Q. There are considerable differences, are there not, between the two? You say they are the same and I suggest that there are many differences. Do you agree?

A. We feel that there is not a very big distinction.

Q. Is there some distinction? Let us put it that way. A. Yes.

Q. I go further and suggest that there are many distinctions, some of which are quite vital. Do you go that far? A. No; I would not go that far because I contend that a cooperative, that is an organization posing as a cooperative, which is incorporated under the Companies Act and having share capital and stock issued is very much the same as any other corporation.

Q. Perhaps you can help the Commission by indicating, even if it takes a few minutes, three or four or more ways





in which they are the same, and then follow that with three or four ways in which they differ. Do you care to do that?

A. Well, the points in which they are the same are, in my estimation, when any cooperative or any subsidiary of any cooperative is incorporated under the Companies Act of one of the provinces or of the Dominion and share capital is issued.

Q. I will not pursue that. Perhaps we can get the information from other sources. Further down in the same paragraph you go on to talk about the Alberta Wheat Pool and the Manitoba Pool Elevators Limited. You say: "In the case of two of these subsidiary companies, they are engaged in the insurance business" -- referring to the same subsidiaries? A. Yes.

Q. ".....in competition with other insurance companies and they have operated at a profit" -- that is, the insurance companies -- "during most years of their lifetime." When you say that they are engaged in business in competition with other insurance companies, I want to know whether these insurance companies to which you refer insure anything but the property of their own members. Do you know? A. I don't think they do.

Q. You think it is limited? A. Yes, to their own properties.

Q. In what way do you say they are in competition with other insurance companies? A. Were they not in that insurance business, privately owned insurance companies would get the business of cooperatives.

Q. Unless they saw fit to be their own insurance companies? A. Yes.

Q. Have you knowledge that these subsidiaries to which you refer have operated at a profit, or is that



only hearsay? A. We have knowledge that they have operated at a profit during the last year.

Q. Where -- from their financial statement?

A. Yes.

Q. Then you go on and draw perhaps on your imagination a wee bit, looking into the future and visualizing what it might lead to? A. Yes.

Q. That is the effect of that paragraph? A. Yes.

Q. Now turn to page seven: "As to method of operation, we contend that the wheat pools at least since early 30's have conducted business as principals and not as agents for their members." What do you base that on?

A. That is based upon this, Mr. Parker, that originally it was my understanding that the pools bought grain from the members and paid an advance or initial payment with the understanding that they would pay additional sums if the handling and sale of that produce warranted it.

Q. What time are you speaking of? A. That was originally.

Q. Prior to 1930? A. Yes.

Q. I am more particularly interested in what they are doing now. Are they doing business now as you say, conducting business as principals and not as agents for their members? Is that how they are doing business now?

A. I understand so; that is our contention, yes.

Q. I know what your contention is, but I want more than mere contention, when you are suggesting facts on which the Commission can rely. As a matter of fact, you do not know? A. No; I would not state that to be a fact.

Q. You make this statement: "A member of a co-operative is very much like a shareholder in a joint stock company, except in most cases he has contributed little





or perhaps nothing to the cooperative." That is the only distinction you make between a shareholder and a member of a cooperative? A. Where is that?

Q. It is in the middle of page seven. A. In that regard there is this distinction; that most members of cooperatives have to become members because of their interest in dealing with the organization. In the case of most corporations, the shareholders do not necessarily go into or invest their money in the corporation with the idea of dealing with the organization. However, that is a matter of numbers, because we could conceive of our own company distributing our capital stock one share each to all our customers who patronize us, and they would then hold the complete control of the company, the same as the members of a cooperative would. They would then be our customers and our shareholders and we would still be taxed because we would be in the category of a corporation, whereas the cooperative would claim exemption from taxes.

Q. Look at the rest of that paragraph. I have a note beside it to the effect that it is argument rather than statement of fact, and if you agree with that I will pass on. Is that a correct way to state it? A. Yes.

Q. On page eight again we find certain statements of things you believe rather than of things you know as matters of fact. For instance, you begin one paragraph with these words: "We believe that in their early history .....". That is only argument? A. Yes.

Q. Come to the last paragraph on the page: "Today, the wheat pools purchase and handle wheat as agents of the Canadian Wheat Board exactly on the same arrangement as all other grain companies." Is that correct? A. That is correct.





Q. I understand that the Canadian Wheat Board fixes prices. Is that right? A. All grain companies buy as agents for the wheat pool.

Q. At a price fixed by whom? A. There is a minimum price fixed by the wheat pool, but there is no maximum price.

MR. ARNASON: The Wheat Board, you mean.

THE WITNESS: Yes.

BY MR. PARKER:

Q. And the handling charges are fixed by --  
A. The handling charges are fixed by the Board of Grain Commissioners.

Q. Is that minimum also or maximum? A. That is maximum. There is no minimum; we don't need to charge any.

Q. They fix the maximum? A. Yes.

Q. As a matter of fact, do they charge the maximum in practice? A. Speaking of the grain companies, or the wheat pool?

Q. The pool. A. The grain trade, including the wheat pools, have charged the maximum rate of handling charge until it was reduced recently.

Q. The wheat pools have been charging the maximum until recently? A. I understand that to be the fact.

Q. And the companies have been doing exactly the same thing? A. Yes.

Q. And they both changed at the same time?  
A. Not at the same time.

Q. Substantially the same time? A. Substantially.

Q. And I presume for the same reason? A. Well the reason, I think, was publicly announced why the wheat pools reduced their charges.



Q. And the companies had to follow suit? A. That is true. We have to observe approximately the same price.

Q. They don't buy at their own rate. They don't become the owner of the grain they buy as agents?

A. They buy from the growers but they are acting as agents for the wheat pool.

Q. The real buyer from the grower is the Wheat Board? A. Yes.

Q. That is correct? A. Yes. It is correct as far as wheat is concerned, but it is not correct as regards other grain.

Q. I am referring only to wheat. You say: "They exercise no discretion as to the sale of same and are therefore not able to benefit their members by more advantageous sales than competitors." That, I take it, is correct?

A. As far as the selling end is concerned, yes. That is a fact. There would be differences in the methods of handling the operation of the company, the overhead.

Q. On page ten there is the following statement, which my curiosity hardly permits me to pass over: "This is so evident that there cannot exist in the mind of any person with a sense of right and wrong a doubt as to the burning discrimination which has been allowed to exist and of the favourable position which the cooperative organizations now enjoy." That is a fairly strong statement. Honestly, I am afraid there may be some doubt in the minds of some of us right here. We all have some sense of right and wrong. A. That only applies to the question of taxation where competition exists. It does not mean that we are contending that all the statements we have made in this brief are such that any person with a sense of right and wrong, and so on.





THE CHAIRMAN: It is rhetorical?

THE WITNESS: Yes.

BY MR. PARKER:

Q. Take the statement that appears at the bottom of page ten extending over to page eleven. Let us clarify that somewhat: "In cases where this is an actual condition of trading, then we agree with the principle and with the decisions of the courts dealing with it." What is it that you are agreeing with? State it in your own language.

A. That refers to the principle that one cannot make a profit out of dealing with oneself.

Q. In other words, you are dealing with the theory of mutuality? A. Yes; or, in other words, trading pockets--transferring funds from one pocket to the other.

Q. When that condition exists, you agree that there can be no profits and nothing to tax? A. Yes.

Q. And that is all irrespective altogether of section 4 (p). It would be so if there were no 4 (p).

A. Yes.

Q. They would not have income in fact and would not have to ask for exemption? A. Yes.

Q. You go on to say: "But we certainly do not have such a condition in most cooperatives today and especially not in the wheat pools." I don't want individual names, but what types of cooperatives have you in mind when you make that statement? A. I would say only a cooperative which traded entirely within itself, or one composed of members that traded among themselves and not with any outside person or persons whatsoever; in other words, it would be a condition where no one outside of their



own membership conducted any business whatsoever.

Q. With the corporation? A. With any person, with anybody.

Q. As long as their activities were confined to transactions between the association itself and the members thereof, that would be the one that would have no income; but the moment they start doing business with somebody other than these two -- A. A second party.

Q. The moment a third party enters the picture, then they step out of that category. Is that what you are saying? A. Yes.

BY MR. ELLIOTT:

Q. So long as they remain in that category you would not suggest, or would you, that you apply the sales tax or a special cooperative tax on sales to those transactions with members? A. That is right; but I cannot conceive of any cooperative being set up for that purpose or of any such being in existence.

BY MR. PARKER:

Q. You do not know any that operate that way?

A. It would be a situation where a group of individuals banded together in a cooperative and one had grain, say, and the other livestock and the one traded his grain for the livestock, and a third party had some farm machinery which the other party wanted and they traded entirely within themselves. The moment they go to a third person, either to buy goods, or commodities or services, or to go outside and sell goods or services to some person, then I say they step out of the category.

Q. That is, they automatically step out of the category of mutual trading? A. Yes.



BY MR. ARNASON:

Q. Would that condition apply to individuals or can you visualize an organization of any kind that would carry on business just in the manner you describe?

A. No, I really cannot, because eventually that organization would have to go outside unless it reverted to the conditions of early history where people were on the barter system and an isolated group of people banded together in a cooperative and merely carried on trading among themselves.

BY MR. PARKER:

Q. I pass over pages eleven and twelve, which I think merely set out argument, and I come now to the figures given on page thirteen of the brief. You give, from 1939 to 1944 inclusive, the percentage of income and excess profits taxes paid to net taxable profits. Are these taken from your own records? A. Oh, yes.

Q. These various percentages total 227.13. Did you intend to divide that by six to get the average?

A. Yes, that should be done.

Q. But would even that be strictly correct?

A. You would get the average over a period of time.

Q. It would be correct only if the profits were the same in each year? A. Yes.

Q. So that there is not really much point in adding them up; each year must stand on its footing.

A. Yes. As you say, there is no point in adding them up.

Q. Converted into dollars over that period the amount is \$250,000? A. Yes.

Q. And a company doing the same or substantially the same business under the other system gets rid of that burden? A. Anyone who is exempt, in doing that much





business naturally would.

Q. As regards these wheat pools that you have been putting side by side with yours, your experience is that you have been burdened to this extent, that many dollars, so that they have that much advantage over you? A. Yes; that is correct.

Q. Do you not get any compensating advantages for that which they do not get? A. I can't think of any advantage.

Q. Have you ever thought of it along that line? Have you sat down and said to yourself, "We pay \$250,000 and a cooperative does not. That looks unfair on the face of it. That being so, I wonder if there is anything we get which they don't get." Did you ever think of it in that way? A. As far as the shareholders go, they get permission to share in any profits that are over and above what has been taken in the way of taxation.

Q. That is, the customers of the company?

A. No; I am speaking of the shareholders.

Q. But your company would not be able to do much business without some customers? A. That is right.

Q. It would not make a profit unless you had customers? A. Yes.

Q. And it is only because you have customers that you are able to make a profit? A. Yes.

Q. Why don't you divide that profit with your customers? A. The reason was previously stated, namely, that we are not allowed as a corporation to pay our customers back any portion of that.

Q. Not unless you had the consent of your shareholders -- theoretically at any rate. A. Even with the consent of our shareholders.



Q. You have to pay taxes first? A. The Government says we must pay taxes first.

Q. You cannot think of any compensating advantage that you get? Well, if you can't you can't. Now, on page fourteen, where you are more or less arguing, you say: "...then the corporations will require reserves which they have not been able to build up because of high taxation and they will be unable to weather a financial storm in competition with cooperatives that have been subsidized by tax exemption." In what way are cooperatives going to offer better prices, or is it because they have better facilities resulting in the saving of something, or is it a combination of both? A. If they were a producer cooperative they would be able to give their customers more for the produce bought and handled.

Q. By using up reserves? A. Yes. In other words, they could overpay the market and lose on a particular year's operations or save on the year's operations.

Q. Pay more than the going price just to keep the business? A. Yes.

Q. Or alternatively they would have better facilities and perhaps operate more economically than you could because your facilities would have been worn out by reason of your not being able to get your improvements?

A. That is possible, although that would be limited of course by the incentive -- well, not the incentive but actually the amount that any private company expended during those years to keep their properties up. Of course, legitimate repairs go in as expense in the year's operations of a corporation.

Q. Dealing with the last half of page fourteen and





the top of page fifteen, the order in council to which you refer two-thirds down page fourteen, I want to know if the provisions of that order in council apply to co-operative milling companies as well as non-cooperative milling companies. A. That is a point we have wondered about but have never been able to find out.

Q. Why? A. We would take it that it does not apply for the reason that the cooperative milling company would claim exemption from the excess profits tax.

Q. And it could not apply? A. It could not apply. In other words, they have no standard of profits.

Q. Having no profits, they certainly have no standard of profits, as they contend? A. Yes, that is right.

Q. In the middle of page sixteen you say: "This course of action is to so regulate their business that they would not have any taxable profits at the end of their fiscal year." You state that they made certain statements about what they were going to do if the exemption were removed or some other method of taxation set up. You say they state that policy and then you make the statement I have quoted. Where have they so stated their policy, and when and to whom? A. In the press.

Q. What press? Is there anything of an official nature? A. As far as I recall, we got that information from a clipping from the Financial Post as a statement made by Mr. Wesson of the Saskatchewan Wheat Producers.

Q. That is what you are basing that statement upon? A. Yes.

Q. Then you go further to deal with your proposed remedies, which are worked out on the assumption that the argument you previously made is sound. You say in effect that it leads to the necessity of some remedy and you



suggest one? A. Yes.

Q. You do not intend it to be official; it is a suggestion which may be modified? It is not put forward as a complete scheme? A. No, merely as a suggestion.

BY MR. ARNASON:

Q. At the top of page eight there appears the following sentence: "Any bonus which may be paid by a cooperative is similar to a dividend paid to a shareholder in a corporation." I wonder whether you would mind explaining a little more clearly what you mean by that. Are you suggesting that if a corporation pays interest or dividends on its stock held by its shareholders, that is essentially the same as patronage dividends paid by a cooperative to its customers on the basis of the volume of business done by those customers with the cooperative? I just want to get a clearer explanation of your own ideas in this connection. A. It would not be the same. We merely said it would be similar, and the difference, of course, as we see it would be that the dividend paid to the shareholder would be paid on the percentage of his capital invested, whereas the bonus or dividend paid to the member of a cooperative is usually based on the amount of business he does.

THE CHAIRMAN: That word bonus has no other significance than dividend?

THE WITNESS: No.

BY MR. ELLIOTT:

Q. I would like to go back for a moment to the first set of questions Mr. Parker asked you, because I am not quite sure that we got to the heart of the matter there. I would like to see whether you have anything further to say that would clear up a doubt in my mind on



the subject. It seems to me that if you argue that co-operatives and corporations are identical and therefore should be taxed in precisely the same way you have a self-consistent argument; or if you say that cooperatives and corporations are different sorts of animal and should be taxed in different ways you may have there also a self-consistent argument. But you have almost said that corporations and cooperatives are the same sort of animal and that therefore you recommend that they be taxed in different ways. That is just a common sense way of looking at what you seem to me to have said and it suggests to me that we have not got down to the roots of the matter at all -- that the real root of the matter may be something different from what has been emphasized in all this discussion. Would you care to say anything that might help to clear my mind on the question? A. During the discussion I think I have admitted that there is some difference between corporations and cooperatives. Those differences have been enumerated; at least some of them have been. However, we have contended that the operation of the wheat pools is so similar to that of the corporations that they should not be exempt under the present provisions of section 4 (p) of the Income Tax Act; and although it does look inconsistent we have recommended in our first plan that they be taxed differently. We do so for these two reasons: First, that the Government needs money and corporate taxes are a large source of Government revenue; and secondly, that the wheat pools have indicated their course of action. If they are taxed under that law they will see that there will not be anything to tax.

Q. That possibly is the real meat of the matter, which leads you to suggest a different method?





A. That is exactly right, yes, though it may seem rather inconsistent, I admit.

Q. May I pursue that for a few moments in order to clarify the position. Do you fear that they will be able so to organize business that they will not have an income based upon the existence of large surpluses which they hold at present, or are you thinking of something more permanent than that? A. Well, in respect of our own situation, I would say that we definitely have a fear of the financial reserve which they have been allowed to accumulate especially in the last two or three years when taxes have been high and profits also have been high. But going further, this suggestion is not based on any thought on our part that we cannot compete if we are both on the tax structure or tax basis. We are quite willing to take our chance along with any other system of business, whether a cooperative or a partnership or a private individual, or with other corporations. We feel that if we cannot compete on even terms then we had better go out of business. We have been in business almost four years and we feel that we can continue to compete provided we are both put on the tax basis.

Q. Does this summarize your position -- that if these large reserves of your competitors were wiped out, and if section 4 (p) were repealed, then you would be willing to take your chances with them? A. Oh yes, definitely.

THE CHAIRMAN: What would be your idea as to the effect on cooperatives if the reserves were wiped out?

THE WITNESS: I don't think it would be sound economy to wipe them out entirely.



THE CHAIRMAN: By wiping them out, I assume you mean taxing them?

MR. ELLIOTT: Or if they disappeared from any cause?

THE WITNESS: They could disappear in the normal course of being taxed. If they disappeared as a result of going back to member-customers, or customers, then of course that would immediately put private industry in the position where we would have to meet that condition as long as they were pouring back the the reserves to the members in the way of increased amounts paid for their produce, or in the form of patronage dividends.

MR. ELLIOTT: Lest there be any misunderstanding in the matter, may I compliment you on the phrasing of your brief and the manner in which you have given evidence. I do not wish you to feel that I have asked my questions because of any defect in the brief.

THE WITNESS: Not at all.

THE CHAIRMAN: We are all agreed on that, I think.

BY MR. HOWARD:

Q. I would like to have you advise the Commission whether the views you have expressed in relation to possible tax methods that might be adopted are entirely those of your company or whether they are the views of other line elevators. A. They are entirely the views of our own company. We have not consulted any outside interest or even any solicitor, as a matter of fact.

MR. PORTER: There is one observation I should make. From some things which he frankly admits are assumptions, and some contentions, Mr. Ellison has proceeded to draw certain conclusions about my client, the Alberta Wheat Pool. Those conclusions being both inferences of fact and mixed





questions of fact and law, I see no purpose in taking up Mr. Ellison's time cross-examining him, nor do I think it would serve any purpose to cross-examine.

THE CHAIRMAN: I do not know that "cross-examine" is quite the word. There is an intermediate term between cross-examination and examination.

MR. PORTER: Questioning, perhaps. As regards the facts on which he bases his conclusions with respect to my client, those facts will come to the Commission in our own presentation in a manner which, I submit, will be much sounder than anything I could elicit through questioning a man who has not access to the facts. I do not want the inference to be drawn that in refraining from questioning the witness I agree.

THE CHAIRMAN: I do not think anything has been said to leave that inference. That closes the brief.

MR. PARKER: Inasmuch as we had a rather late beginning this morning is it your wish, Mr. Chairman, that we should continue for a while? We have time to have the next brief read and the examination can be deferred until tomorrow.

THE CHAIRMAN: That is advisable.

MR. PARKER: I propose to take up now the brief of the Co-operative Milk Company Ltd.

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R. V. DUFFY,

Manager,  
Co-operative Milk Company,  
having been duly sworn  
testified as follows:

BY MR. PARKER:

Q. What position do you occupy with the Co-operative Milk Company? A. The position of manager.

Q. How long have you been manager? A. Since May, 1938.

Q. Continuously since then? A. Yes.

Q. Prior to that where were you? A. I was with Woodlawn Dairy, Edmonton, for eleven years.

Q. Similar business? A. Yes.

Q. Where does the company carry on business?  
A. Edmonton.

Q. But the company we are discussing today?  
A. Calgary only.

Q. You have a brief which you are about to read?  
A. Yes.

Q. Who prepared it? A. I supplied the facts and my auditors, of course, assisted me, as well as my solicitors.

Q. Has it been submitted to your Board of Directors?  
A. Not finally approved. I was instructed to prepare a brief by a full board meeting, and about three members of the board have looked the brief over.

Q. Three out of how many? A. Out of five.

Q. So that it is fairly represented? A. Yes.

Q. Were they all present? A. Yes.

Q. I mean, when the discussion took place as to the general features with which the brief would deal? A. Yes.

Q. Was it submitted to the shareholders?  
A.. It was mentioned at a general meeting a week ago last



Monday that we would come before the Commission and give our views.

Q. Was that a fairly representative shareholders' meeting? A. Yes.

Q. How many members? A. We have fifty-nine members and at that meeting there was an attendance of 60 per cent.

Q. Was it called specially for the purpose of considering representations? A. No, it was the annual meeting.

Q. There was nothing in the notice calling the meeting that indicated that this matter would be brought up? A. No.

Q. That is the atmosphere in which the brief was prepared? A. Yes.

Q. Will you present it.

THE WITNESS: Our brief reads as follows:

"1. Introduction.

"This Association is engaged primarily and mainly in the distribution of fluid milk and cream to consumers in the city of Calgary. The price of milk and cream both to the producer and to the consumer is fixed by the Board of Public Utility Commissioners for the Province of Alberta. By chapter 18 of the Statutes of Alberta 1933 that Board was first given jurisdiction to inquire into matters relating to the distribution of milk and cream and to fix minimum prices both to the producer and consumer. Increased powers have since been given the Board from time to time so that now it is empowered to fix minimum prices and to exercise full and complete control over the industry. It may be said therefore that the business of this Association is that of a public utility supervised and controlled by the said Board.





It is the object and policy of this Association to return to the producer as much as possible of the margin allowed by the said Board for distribution costs and at the same time to process or market on behalf of its members any surplus production not sold from delivery wagons.

"II. Origin and History of Association.

"(1) Arising out of the generally depressed conditions of agriculture in the early 20's and the dissatisfaction and unrest which then prevailed among farmers due to the very low prices of farm products an association of milk producers in the Calgary milk shed had been organized and operated for some years for the purpose of improving the marketing conditions affecting their product. The major milk distributors in Calgary were then the Union Milk Company Limited and the Producers and Consumers Milk Company Limited. The said Association was never incorporated and confined its efforts to negotiations with the said milk companies from time to time with respect to prices and the allotment of summer and winter averages.

"(2) After some years experience in that endeavour the Association apparently concluded that it could not attain its objectives as only a negotiating body and it decided to enter actively into the business of distributing milk and cream in Calgary. It therefore applied for and completed incorporation of a cooperative association under the provisions of The Cooperative Marketing Associations Act of the Province of Alberta. We understand your Commission has been supplied with copies of that Act and we assume that you are therefore acquainted with its provisions. The new cooperative was organized in the early spring of 1929 under the name Calgary and District Milk



Producers Association Limited. That name was later changed in 1942 to Co-operative Milk Company Calgary Limited and the Association now operates under that name.

"(3) After its incorporation the first step taken by the Association to provide distribution facilities, was to purchase a small dairy in the Riverside district of Calgary known as the Independent Dairy, in which premises the business of the Association was carried on for a few months until the present premises were acquired.

"As will be shown in the brief filed by the Southern Alberta Dairy Pool Limited, the organizers of that Association had been holding meetings during the year 1928 which resulted in the incorporation of that cooperative in August, 1928.

"(4) For many years the governments of this province have been interested in the sound development of cooperative organizations and have given expression of their interest first by the appointment of a supervisor of cooperative activities and secondly by financial assistance in acquiring facilities. In 1929 assent was given to an Act known as the Cooperative Marketing Associations Guarantee Act, being Chapter 59 of the Statutes of that year. By that Act the Provincial Treasurer is authorized to guarantee loans to cooperative associations incorporated under the Cooperative Marketing Associations Act to provide funds for the purpose of acquiring land, factories and plant, and equipping the same with machinery. Under the terms of the Act loans may be provided to the extent of 85 per cent of the cost of plant and equipment. The total amount of loans which may be guaranteed under the Act is limited to one million dollars.





"(5) Steps were therefore taken jointly by this Association and the Southern Alberta Dairy Pool Limited in 1929 to obtain loans under the provisions of the said Guarantee Act. Conferences were held at Calgary attended by the Hon. George Hoadley, Minister of Agriculture, the Hon. R. G. Reid, Provincial Treasurer, Mr. Malin, the then supervisor of Cooperative Activities and representatives of the said two cooperative associations. As a result of these conferences the government agreed to guarantee loans sufficient to provide plant and facilities for the two organizations.

"(6) Land for the site was purchased and registered jointly in the names of the two associations. Plans for a building to house both organizations were approved. Formal application was made to the government for the necessary guarantee and the government agreed to guarantee loans made by the Royal Bank of Canada to the extent of \$112,000 with respect to this Association and \$77,400 with respect to the Southern Alberta Dairy Pool Limited. These loans were repayable in twenty years with interest at 6 per cent. The Government, on making the guarantees, secured itself by taking a joint mortgage from the two associations on the land plant and buildings as well as a debenture which provided for a charge upon all assets. Under the terms of the said Guarantee Act the borrowing association must first raise 15 per cent of the cost of facilities for which the loan is required. This Association provided that 15 per cent from its investments in the original Riverside property and from cash provided by its members.

"(7) The land and facilities acquired in the manner above outlined were first held jointly by the said two associations but by a partition agreement entered into in



January 1940, a division of the property was affected on the basis of a party-wall and each Association became the sole owner of that part of the land and building occupied by it. The old mortgage to the Government was discharged and new mortgages were taken from each Association.

"It may be noted here that this guaranteed loan made by the Royal Bank of Canada has been reduced from the original amount of \$112,000 in 1929 to the sum of \$24,000 as of the 31st day of October, 1944.

"III. Organization and Membership.

"(1) An examination of the Memorandum and Articles of Association filed herewith discloses the following salient features:

"(a) The Association is empowered to act as factor and agent to receive and take delivery of, handle, mix, manufacture into butter or cheese, or milk products, grade, store, transport, market, sell or otherwise dispose of the milk or cream delivered to it by its members.

"(b) The Association has no share capital.

"(c) Membership is based exclusively upon the producer signing the standard marketing contract. A copy of the current marketing contract is filed herewith.

"(d) A member has only one vote at any general meeting of the Association, and cannot vote by proxy.

"(e) The Memorandum of Association provides that the interest of each member in the assets of the Association shall be in the proportion which his holdings of reserve share certificates and participation certificates bear to the total reserve share certificates and participation certificates outstanding from time to time.



"(2) The Association from its inception to the present time has operated on the basis of the said standard marketing contract. An examination of this contract discloses the usual terms and conditions characteristic of such marketing contracts. These include:

"(a) The producer agrees to deliver all his milk or cream to the Association for a period of five years.

"(b) The Association is appointed agent and factor within the meaning of the Factor's Act to receive and take delivery of the said milk and cream and to handle and market the same on behalf of its members.

"(c) The Association is empowered to borrow money and for that purpose to give security on the said milk or cream.

"(d) Authority is given the Association to make certain deductions from the proceeds of the sale of the members' milk or cream for capital or other purposes of the Association (Clause 10).

"(e) Reserve share certificates shall be issued by the Association representing such deductions and shall be repayable at the discretion of the directors but in any event within fifteen years from the date of issue of same. In other words the amount represented by such reserve share certificates is in the nature of loan capital loaned to the Association without interest for a maximum period of fifteen years.

"(3) At the present time the membership in the Association consists of fifty nine producers. The minimum membership during all years of operation has been fifty six and the maximum membership seventy two. It should be noted that the producer members reside within what is commonly called the Calgary milk shed, an area of





approximately twenty miles radius around the City of Calgary. The members are therefore fairly well known to each other, coming together conveniently for the purpose of meetings and there is a real mutuality of interest in furthering and developing the marketing conditions of their product. The producer is empowered to withdraw from the Association on terms set out in Section 13 of the contract.

"(4) The nature of the business itself restricts membership. This restriction is increased by the control of the business by the Public Utility Board. Before a producer can become a member the Board of Public Utility Commissioners must be satisfied that his production is needed before it will give him a license to deliver same. The license to a milk producer when issued, is only temporary in nature and does not become permanent until the producer buys out some other producer who has an established milk delivery quota. The producer must also satisfy the requirements of the City Health Department before the City of Calgary will issue a producer's license to him. After these obstacles have been overcome the Producer is under heavy expenses in maintaining his plant and equipment in such shape as to satisfy the exacting demands of the Health Department of the City. His interest in the advantageous marketing of his product is therefore increased.

"(5) Subject only as hereinafter set out only members deliver milk or cream to the Association. There have been occasional times when, on account of milk shortage, the Association has had to purchase milk or cream from other sources but the amounts so purchased were small and would only represent a very small percentage less than 1 per cent of the total volume handled by the Association.



In other words over 99 per cent of the milk or cream handled by the Association is received from its members under the marketing agreement.

"(6) At the time of its original organization the Association received the support and encouragement of organized labour in the City of Calgary. Members of labour organizations wished to have an interest in the Association. Provision was therefore made which permitted them to subscribe for 3,000 preferred shares of stock having a par value of \$5.00 per share. The said shares carried no voting right, but did carry a fixed rate of interest of 7 per cent. Of the 3,000 shares authorized only some 1,200 were actually allotted. The said shares are redeemable and the Association has from time to time redeemed them. At the present time there are only 685 of the said shares outstanding of a par value of \$3,425. The Association for some time past has been financially able to redeem all these shares still outstanding but has preferred not to do so, believing that the business of the Association is promoted by the fact that the said shares are held by patrons. Indeed during the first year or two of the Association's activities an attempt was made to distribute a portion of its earnings among consumer patrons. This practice however was frowned upon by the Board of Public Utility Commissioners when that Board first assumed control of the business and the practice was then entirely discontinued.

"IV. Business Methods.

"(1) As already stated this Association, insofar as it is engaged in distributing fluid milk and cream in the City of Calgary, may be regarded to all intents and purposes as a Public Utility subject to the direction and control of





the Board of Public Utility Commissioners, which said Board is now empowered to fix prices paid to the producer as well as paid by the consumer in the said city. In taking delivery of milk from its members producer it therefore pays over to such member on delivery, the amount fixed by the said Board, which amount is of course the then current milk price for the Calgary district. In this respect it does not differ in any material way from its competitors. As the selling price to consumers in the city is also fixed by the said Board that price is uniform among all companies doing business in the city. The chief competitors of the Company are -- Union Milk Company Limited, Model Dairies and Palleson's Dairy (a subsidiary of Palm Dairies Limited). All companies distribute milk and cream by delivery from house to house as well as through stores, restaurants and similar outlets. The Association admits that there is a marked similarity between its method of carrying on this major part of its business and that of its competitors. There is this important difference however that in addition to its initial payment the Association is bound by contract to return to its member producer proportionately any earnings made in carrying on the business, including any earnings made on surplus milk.

"(2) When delivering milk to consumers in the Calgary district it was found desirable to supply butter as a convenience to its patrons. All companies do the same. An arrangement was made with the Southern Alberta Dairy Pool Limited whereby surplus milk was delivered to that Association and butter obtained in return. Any extra butter required is purchased from the same Association.



"(3) In 1937 in order to utilize fully the surplus milk received from its members the Association entered the business of manufacturing ice cream and up until the last year or two used only milk or cream supplied by its members for that purpose. In the last year or two it has been necessary on occasions to buy elsewhere small amounts of milk or cream to cover shortages.

"(4) As will be seen from the foregoing the Association acquires milk or cream almost exclusively from its own members. The only part of its business which may be said to be with non-members is confined to such occasional purchases of milk or cream as may be necessary in periods of shortage and the purchase of butter from the Southern Alberta Dairy Pool Limited for sale to its consumer patrons. The total amount of such non-member business including all butter purchased from the said Southern Alberta Dairy Pool Limited has not at any time exceeded 15 per cent of the total business done with its members and has usually been considerably less. If regard is taken to the surplus milk delivered to the said Southern Alberta Dairy Pool Limited in exchange for butter, then that percentage of business with non-members is very small indeed.

"V. Information Respecting Finances.

"(1) Reference has already been made to Clause 10 of the marketing contract. The current contract provides for a deduction not exceeding 5 cents per hundred pounds of total milk delivered by the member. The original contract provided for such deductions on the basis of 2 cents per pound butterfat. In order to provide funds for the gradual retirement of the loan from the Royal Bank of Canada, guaranteed by the Alberta Government, and to repay loans from





shippers to make up the 15 per cent required under the Co-operative Marketing Guarantee Act above referred to, the Association has from the beginning exercised the rights provided by Clause 10 and has made deductions of varied amounts. These deductions, with only one exception were always kept within the maximum fixed by said Clause 10. On one occasion in 1930, with the full consent of its members, the deduction was increased to 10 cents per 100 pounds of milk. These deductions, when made, are deposited in a special account with the Royal Bank of Canada and from that account payments are made from time to time to the Royal Bank on account of the said loan. The amounts so deducted are carried on the balance sheet of the Association under the heading Reserve Share Certificates.

"(2) Immediately after the Association commenced business and even before its new building was completed, the competing companies instituted a price war by increasing prices paid to the producer and lowering prices to the consumer. As a result the Association ran into a series of losses during 1929 and 1930, aggregating in all approximately \$16,300. In addition the Association found itself without working capital and to meet that situation the members agreed to a further deduction not provided for in the contract, for the establishment of a commercial reserve. These deductions continued from February 1, 1930, to April 30, 1931 and varied from a minimum of 4 per cent of total returns to a maximum of 10 per cent for a short period. The total deductions made during that period amounted in all to \$12,391.05. The members subsequently agreed to the cancellation of any obligation for repayment of these deductions. This incident is referred to as emphasizing the determination of the members of the





Association to preserve their organization intact as a desirable and useful instrument for obtaining better marketing conditions for their products.

"It should be noted that in addition to the assistance extended by the members individually at that time, the Provincial Government came to the assistance of the Association with a loan of \$14,500 from a fund known as the Wheat Board Surplus Fund. This loan has since been reduced to the extent that a balance of \$4,500 remains unpaid as shown by the last balance sheet of the Association.

"(3) During the first eleven years of the life of the Association no distribution of operating surplus was ever made, due in the first place to losses incurred in 1929 and 30 and later to the fact that surpluses were not large in any event and the members were willing to leave the funds with the Association until a distribution could be conveniently made. A statement is presented herewith giving an analysis of the balance sheet and operating statement of the Association from the year 1929.

"(4) In 1942 the Association was reorganized effective the 1st day of November, 1941. The main features of that reorganization may be outlined as follows:

"(a) With respect to the Reserve Share Certificate account built up during the eleven preceding years and represented by reserve share certificates issued annually during that period, all such outstanding certificates were called in and a new certificate entitled Series 'A' Reserve Share Certificate was issued to each member in place of the former certificates held by him; a copy of such certificate is filed herewith. By agreement with the members, arrived at in general meeting, the Series 'A' Reserve Share Certificate carry interest at 3 per cent on the outstanding balance



owing from time to time and are to be retired over a period of ten years from the said 1st day of November, 1941, 10 per cent of the total being redeemed each year. In order to provide a fund for the retirement of the Series 'A' Reserve Share Certificates the Association continues to make deductions from its members and Series 'B' Reserve Share Certificates were and are being issued to cover annual deductions. These certificates carry no interest. In other words a revolving fund plan has been established on a ten-year basis with respect to Reserve Share Certificates.

"(b) The total undistributed surplus accumulated during the previous eleven years and amounting, as of November 1, 1941, to approximately \$20,000 was allocated among the existing members. Certificates called Series 'A' Participation Certificates were issued to each member for his proportionate share in the accumulated surplus. And again by special resolution it was arranged that a new series of certificates called Series 'B' Participation Certificates were set up to represent the allocation of subsequent annual surpluses. A copy of such certificate is filed herewith. The actual cash retained and represented by the Series 'B' Participation Certificates will be used for the purpose of retiring proportionately the Series 'A' Participation Certificates and the bank loan. No interest is paid on any of these certificates. The result has been to establish a revolving fund with respect to allocation and distribution of surplus.

"Since the reorganization effective November 1st, 1941, at the end of each fiscal year Series 'B' Reserve Share Certificates, representing deductions made under Clause 10 of the contract during the year and Series 'B'





Participation Certificates representing the members' interest in the annual surplus are distributed annually among the members.

"(5) The balance sheet of the Association makes provision for the usual reserve for depreciation and bad debts. For the fiscal year ending October 31, 1944, an amount of \$2,282.27 is shown as the undistributed surplus.

"The amount transferred annually to depreciation account is calculated according to the scale of percentages allowed by the Income Tax authorities for properties of various kinds.

"The reserve for bad debts is calculated annually on a fair and reasonable basis and after due consideration of accounts receivable.

"The amount carried forward as surplus is made up of odd amounts remaining from year to year after allocation of participation certificates. It is not feasible to distribute surplus earnings to the last dollar. The sum of \$2,282.27 represents the amount remaining undistributed as of November 1, 1941, when Series 'A' Participation Certificates were issued and the amount remaining undistributed each year since that date.

"No attempt has been made to allocate the amounts carried forward to depreciation or bad debt reserves or as undistributed surplus. The Association assumes that these items are all subject to the provisions in the Memorandum of Association, -- that the interest of each member in the assets of the Association is in the proportion which his holdings of reserve share and participation certificates bears to the total amount of such certificates outstanding from time to time.



"VI. The Association in relation to the Income War Tax Act and the Excess Profits' Tax Act.

"1. From the foregoing it would appear:

"(a) That the Association is one of farmers or dairymen.

"(b) That it is organized on a cooperative basis under the provisions of the Co-operative Marketing Associations' Act of Alberta.

"(c) That it acts as factor or agent only to market the produce delivered to it by its members.

"(d) That it is obligated by contract to pay to its members the full proceeds of the sale of such products, less only operating expenses and necessary reserves.

"(e) That it does in fact allocate proportionately each year among its members the full proceeds of such sales, less only operating expenses and necessary reserves.

"(f) That the volume of business with non-members does not at any time or on any basis of calculation exceed 15 per cent of the business with members.

"(g) Subject only to the small amount of preferred shares outstanding the capital of the Association consists of non-interest bearing loan capital made up of deductions from members' deliveries and payable within fifteen years. There is clearly no investment interest in the Association.

"For these reasons the Association has consistently maintained that it is exempt from taxation under the provisions of Section 4 (p) of the Income War Tax Act. The Association further will protest any amendment to the said Income War Tax Act which has as its purpose the taxation of cooperatives. The Association is bound to account to its members with respect to all money received from the sale of members' products and to pay to each his





proportionate share. There is therefore no profit to be taxed.

"2. It has been suggested that interest paid on capital stock may operate to do away with the exemption which this Association undoubtedly otherwise enjoys. As stated above the margin between profits of sales and operating expenses represents the amount of final payments due the producers. It is not profit in the usual sense of the word. Just why such sums should become profit because the Association pays \$240 per year as interest to one hundred and twenty-two persons who have contributed \$3,425 to assist the cooperative in getting started, is hard for the layman to understand. It is not a large amount to pay to retain the patronage of that number of Calgary householders. The same amount in advertising could accomplish much less. In any event the Association can soon remove this problem, if in fact it exists, by calling in these shares. The Association recommends, however, that in any revision which may be made to said section 4 (p) it should be made clear that a cooperative may pay as an expense a reasonable rate of interest on capital of this kind insofar as it is actually subscribed by members or patrons.

"3. Being exempt from Income Tax the Association is also exempt from Excess Profits Tax. An examination of the operating results of the past five years does show that the volume of sales has increased since the fiscal year ending 31st October, 1938. The Association will maintain, however, that such increased sales as well as the increase in net surplus since the end of that fiscal year is only partly the result of the war. It is commonly accepted now that the entire period from 1929 to the end of





1938 was one of depressed conditions in western Canada. Recovery commenced in 1939. It is reasonable to expect that even if the war had not commenced, the normal recovery in Canada, due primarily to better prices for farm products, would have resulted in greatly increased purchasing power among the people generally, and therefore, a considerable increased volume of sales. Calgary is not the centre of any substantial number of war industries. The principal effect of the war insofar as this Association is concerned is to be found in the number of people coming to Calgary as members of the Armed Forces serving in connection with military camps and whatever sales may have been made by this Association to any of the armed camps or the military hospitals. An analysis of sales in the City of Calgary shows that for the year 1943, 11.3 per cent of total sales were made under army contracts and 2.2 per cent to the Belcher Military Hospital. In 1944 the percentages were 8.6 and 3.2 respectively. Having regard to the increase in wages and all items entering into operating costs the Association is of the opinion that increased net revenue available for distribution among members has not been substantially increased by reason of the war. In any event the Association maintains that it is exempt from taxation under the provisions of the Excess Profits Tax Act.

"VII. General.

"This submission has taken the form of a factual statement only. Its purpose is to present to you the type of organization and the administrative methods evolved by one cooperative engaged in the marketing of an important farm product. It is understood that the Co-operative Union of Canada will in due course submit a brief dealing with the



social and ideological aspects of the cooperative movement, as well as the more general arguments in support of the continued exemption of cooperatives under the Income War Tax Act and the Excess Profits Tax Act.

"With respect to these wider aspects of the cooperative movement, this Association contents itself with saying:

"1. That in common with many other cooperatives in western Canada it had its first origin in a protest on the part of farmers against the conditions under which their produce was marketed, particularly under pioneer conditions and in a period of depression.

"2. It represents an attempt to replace the weakness of individual effort with the strength of collective effort.

"3. The competitive influence of this cooperative within the Calgary milkshed has had a beneficial effect upon the marketing of all milk within that area.

"4. The intelligent interest shown by members in all problems affecting the marketing of milk has led to a greater sense of confidence, which has done much to improve the relationship of producers and distributors in the area.

"5. That same intelligent interest and understanding, and that sense of confidence on the part of producers, that they are receiving the maximum available price for their produce may well prove to be a steadying influence in the post-war years when, it is probably inevitable, there will be some adjustment in the price of farm products.

"Dated at Calgary this 15th day of January, A.D. 1945.

"Respectfully submitted,

Co-operative Milk Company,

Per: R. V. Duffy,  
Manager."





Documents filed with brief:

- (a) Copy of Memorandum and Articles of Association
- (b) Copy of Marketing Agreement
- (c) Copy of Members' Reserve Share Certificate
- (d) Copy of Members' Participation Certificate
- (e) Statement containing analysis of operating results since 1929.

.....

The Commission adjourned until Tuesday, January 23,  
at 10 a. m.

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Tuesday,  
January 23, 1945.

The Commission met at 10 a. m.

MR. PARKER: Before we continue with the witness who was on the stand last night, I should like to say that representatives of the southern Alberta section of the Canadian Automobile Wholesalers Association have handed me ten copies of a short brief which they have requested that I take up with the Commission to see whether they can be heard in Calgary. They point out that owing to the illness of some company officials they were unable to get the brief prepared and filed before, and I told them that probably, if there were time before the end of the session, they would be heard, but that if they were not heard, some other arrangement would have to be made.

THE CHAIRMAN: It will have to go to the foot of the list.

MR. PARKER: Yes. They can take note this morning if they are present; otherwise I will communicate with them.



Examination of R. V. Duffy continued:

BY MR. PARKER:

Q. I have only a very few questions to ask you. At the very start of your brief I see you make this statement: "This Association is engaged primarily and mainly in the distribution of fluid milk and cream to consumers in the city of Calgary. The price of milk and cream both to the producer and to the consumer is fixed by the Board of Public Utility Commissioners for the province of Alberta." A. That is right.

Q. Do you mean that there is a maximum to the consumer and a minimum to the producer, or is there a minimum to both? A. A minimum to each, that is right. The price paid to the producer is the minimum price that we can pay the producer; the price that we can charge our customers on the street is the minimum price we can charge.

Q. Is there a maximum price? A. The maximum price is governed not by the Public Utilities Act but by the Wartime Prices and Trade Board, and has been since the war started.

Q. At the end of that paragraph you say: "It is the object and policy of this association to return to the producer as much as possible of the margin allowed by the said board for distribution costs and at the same time to process or market on behalf of its members any surplus production not sold from delivery wagons." If there is a surplus you are not prohibited from returning it to the producers? A. No; that is right.

Q. On page two, paragraph (3) you make this statement: "After its incorporation the first step taken



by the association to provide distribution facilities was to purchase a small dairy in the Riverside district of Calgary known as the Independent Dairy, in which premises the business of the association was carried on for a few months until the present premises were acquired." Perhaps you will explain that. How did the association secure the finances to make that final purchase? A. I am not sure, Mr. Parker, how that came about. It was before my time, but I believe that is a small percentage. The organization members put up sufficient cash to make this purchase.

Q. Fifteen per cent? A. Not in this case; it was an outright purchase.

Q. Have you any information as to how much was paid for that? A. No sir; I have not.

Q. Would the books show it? A. It is shown partly. From what I could gather it would be in the neighbourhood of \$7,000 but I could not follow it through in the early days of the organization.

Q. You attempted to do that? A. Yes.

Q. But could not get the necessary information?  
A. No.

Q. Did you consult the auditors? A. I have spoken to them about it, but there is a different set of auditors from those of the early days of the company, and at that particular time the records of the association were not very clear. That is before they were incorporated. The purchase was made actually before they were incorporated.

Q. In the initial stages? A. Yes.

Q. And whether it was taken in the name of a group of individuals and later transferred to the association you cannot tell? A. No.





Q. Is there anything to indicate in later years that, assuming you are correct, some individuals put up money on behalf of the anticipated association? A. Yes.

Q. Whether the association ever paid them back --  
A. I presume they did.

Q. Were there any records to indicate that?  
A. I would definitely say that would be paid back.

Q. But are there any records to show it? Is there anything to show where the funds came from to reimburse those who put up the original money? A. In this particular case it is possible that was their share of the fund that was started, and they got credit for it.

Q. Perhaps is not very helpful to presume it unless you are in a position to state it definitely, and you cannot state it definitely? A. No.

Q. Can you tell me whether that amount is reflected in any manner in your statements which you have filed?  
A. It is just possible, sir, that it is reflected in the reserve share certificates issued to the members.

Q. It is possible but you cannot say definitely whether it is so or not? A. No.

Q. Or whether it just disappeared? A. It may have.

Q. In paragraph four you say: "For many years the governments of this province have been interested in the sound development of cooperative organizations and have given expression of their interest first by the appointment of a Supervisor of Cooperative Activities.....". He is the gentlemen we heard yesterday? A. Yes.

Q. "....and secondly by financial assistance in acquiring facilities." In addition to the guarantees dealt with later on, does the provincial government give this association, along with others, any other financial assistance



A. Not that I am aware of.

Q. Apart from the guarantees? A. Apart from the guarantees.

Q. On page three, in the latter part of paragraph six, after you have dealt with the application of loans to the extent of \$112,000 with respect to this association and \$77,000 odd with respect to the Southern Alberta Dairy Pool Ltd., you say: "This association provided that 15 per cent from its investments in the original Riverside property and from cash provided by its members." Will you explain that? What is the Riverside property -- the one we have been speaking of that you bought in the first instance?

A. Yes.

Q. That was sold? A. Yes.

Q. And from the proceeds of that sale there was provided 15 per cent? A. Part of it.

Q. How much was got from the Riverside property? A. I am not sure.

Q. Would not the books show that? A. They were rather confused at that date. That all took place about the time the company was organized.

Q. The company was organized before they applied for the loan? A. It all took place about that time.

Q. You cannot tell us what was paid from the sale of the Riverside property? It formed part of the 15 per cent? A. Yes.

Q. How was the balance of the 15 per cent provided? Will you explain this paragraph. A. The members in those days had very little cash. They went to the Royal Bank of Canada and borrowed \$23,000 and it would be \$23,000 less the amount of the Riverside property.

Q. That is 15 per cent? A. Yes. This money that





was borrowed was turned over to the company.

Q. Borrowed on their individual guarantee? A. Yes, and turned over to the company.

Q. On what terms? A. On the basis of their capital interest in the company at that time.

Q. On the basis of the borrowers' capital interest in the company? A. These members had to put up 15 per cent in order to get 85 per cent to start the company.

Q. Not each member but the aggregate of the members? A. Yes. They had to put up 15 per cent of the original purchase price or cost of this company and that is the way they did it. They did not have money but borrowed it.

Q. And turned it over to the company, and what did they get as evidence that they had loaned the money to the company? What assurance was there that it would be paid back some day, or was it a straight gift? A. As far as the moneys turned over to the company are concerned it was, you might say, loaned to the company without interest.

Q. Was any document issued evidencing the loan -- a certificate or promissory note or some kind of document?

A. To this extent. The association at that time agreed with these members that they would deduct from their shipments of milk a certain amount for the retirement of these members' notes at the bank.

Q. That would be, so to speak, paying off their own loan? A. Yes, paying off their own loan at the bank, and that is the way the members' interest in the company was recognized. The association made the deduction from the farmers' shipment.

Q. The same farmers who had borrowed money from the bank and handed it to the association? A. Yes. It was credited to their notes at the bank and the association in



turn issued reserve share certificates.

Q. That is what I was getting at. So that is how it was done? They had reserve share certificates issued to cover the money? A. Yes.

Q. That is all shown in the records of the company?  
A. Yes.

Q. You are not guessing at that? A. No.

Q. That is how that 15 per cent was arranged?  
A. Yes.

Q. That was a joint operating in the first instance with the other company and later on the two properties were divided? A. The two companies were jointly connected.

Q. In paragraph seven you say: "The land and facilities acquired in the manner above outlined were first held jointly by the said two associations....."

A. That is correct; the operations, however, are distinctly separate.

Q. But as far as financing is concerned? A. Yes.

Q. To use an expression that was employed before, were there any interlocking directorates or interests as between the two associations? Were they two entirely separate groups, or did they interlock in some way?

A. They were interlocking in this way. Each association had its own Board of Directors responsible to its own members only, but from the two boards of directors there was set up a management committee and that management committee dealt with problems affecting the two organizations.

Q. Where they had common property? A. Yes.

Q. Were the members entirely separate?  
A. Absolutely.

Q. No individual was a member of both associations?  
A. No; it was impossible. That would be impossible; they



were under contract.

Q. At the inception of this company, when these producers commenced to deliver milk, it was agreed that certain deductions would be made. Was that in the terms of a written producer's agreement? A. Yes, the marketing agreement.

Q. Have you attached a copy of that agreement?  
A. Yes.

Q. Is that the same agreement as before? A. No. It was revised in 1942 when we changed the name to the Co-operative Milk Company. There were only two or three changes throughout the agreement.

Q. The agreement that you have attached is the one presently in force? A. Yes.

Q. Modified slightly from the form of agreement originally used at the time this transaction took place of which we were speaking? A. Yes.

Q. That fundamental point, namely, permission to deduct a certain amount was in both agreements? A. Yes, it was in, but the amount was changed.

Q. On page three you mention an amount of \$112,000?  
A. Yes.

Q. That was in what year? A. 1929.

Q. And between 1929 and 1944, the date of which this brief speaks, you say: "It may be noted here that this guaranteed loan made by the Royal Bank of Canada has been reduced from the original amount of \$112,000." It was reduced from \$112,000 in 1929 to \$24,000 as at October 31, 1944? A. Yes.

Q. So that in a period of fifteen years this company has improved its position to that extent?  
A. Yes; that is right.



1. The first part of the paper is devoted to a general

discussion of the problem and the methods used in the

present paper. The second part is devoted to the

derivation of the equations of motion for the

system. The third part is devoted to the

analysis of the results. The fourth part is devoted to

the conclusion. The fifth part is devoted to the

acknowledgments. The sixth part is devoted to the

references. The seventh part is devoted to the

appendix. The eighth part is devoted to the

index. The ninth part is devoted to the

list of figures. The tenth part is devoted to the

list of tables. The eleventh part is devoted to the

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Q. And that money was raised for the retirement of that bank loan by these deductions? A. By the deductions and by surpluses from year to year.

Q. It was not only by deductions? A. Not entirely.

Q. About how much would the reduction amount to, approximately, as provided by the deductions? A. In the first eleven years there was a little over \$40,000 and since 1942 there would be \$8,000 or \$9,000; about \$50,000 approximately.

Q. I am a little confused there. By deductions you mean amounts which the producers agreed should be held back, being a part of the minimum fixed by the Public Utilities Board? It was just a part of the general proceeds of sales? A. Certainly a part of the proceeds.

Q. What was the origin of the surpluses? Does not that also come under deductions? A. What is that question?

Q. I understood you to say that this amount provided to pay off the bank loan came from two sources -- partly from deductions and partly from surpluses.

A. Yes, that is right.

Q. I am asking you now where the surpluses came from, if they were not in the first instance part of these same deductions. Am I right or wrong? A. I think you are wrong.

Q. Explain the difference. What are the surpluses? What was their origin? A. The deduction which the shipper under the contract authorized us to make is represented by reserve share certificates on the balance sheet. They authorized that through our marketing agreement.



Q. Specifically earmarked to be used for the reduction of the loan? A. That is right, and we will come to it later on as the revolving fund. Surpluses that were made were also used.

Q. I am asking you how the surpluses arose in the first instance. A. That was the difference between the price we had to pay our producers by order of the Utilities Board and the net that we received from the sale of that product. That was the surplus that accumulated on our balance sheet for the first eleven years of the company.

Q. We might call it the earnings of the corporation? A. That is right.

Q. But under the terms of the agreement those earnings were bound to be returned to the producers -- or were they not? A. That is true.

Q. But instead of being returned to the producers according to the terms of the agreement it was used -- I presume with their consent later -- to assist in retiring the loan? A. There were no provisions made in the early agreement as to when and how these earnings were to be given back.

Q. Was there a definite obligation to give them back at any time? A. Yes.

Q. But no specific time? A. It was in the discretion of the directors.

Q. The directors, in the exercise of that discretion, without consulting the members or after consulting them, as the case may be, decided at some future date to use it in assisting to retire the bank loan? A. That is right.

Q. Let us pass on. Let us take the paragraph at





the bottom of page three where you say: "The association is empowered to act as factor and agent....." and you quote the Act and a number of powers from your charter.

A. Yes.

Q. On what basis do you pick out those particular items for emphasis before this Commission? Why did you omit the others from your brief? A. I presume --

Q. Don't presume. A. I think the reason is this. They outline the things we can do under our memorandum and articles.

Q. First you say that the association has power to act as factor and agent. Is there not a provision in your charter under which this association has, equally, power to buy and sell outright as well as to do business as factor and agent? A. According to my understanding it is there.

Q. There is no question about it, is there?  
A. I would definitely say there is no question.

Q. And if you read all the powers conferred upon the association they sound -- they do to me at any rate -- very much like the ordinary powers set forth in any Companies Act. A. That is possible.

Q. They have exceedingly wide powers to do almost anything? A. That is right.

Q. And particularly the one I mentioned, the power to buy and sell outright. Has this company, at any time in its history, bought and sold materials of its own?  
A. Yes, I believe we have.

Q. In any considerable quantity? A. Not on the percentage of total sales.

Q. I did not ask that. Was it much, or was it



only "chicken feed", to use a slang expression. A. We had one very bad experience.

Q. A considerable amount? A. Yes.

Q. Was that a profitable transaction? A. In this particular case, no.

THE CHAIRMAN: What was the purpose of it?

THE WITNESS: It was branching out in the soft drink business.

BY MR. PARKER:

Q. Perhaps you should have tried hard drinks; the result might have been different. But what was the idea of branching out? I thought the primary purpose of this association, and of others like it, was the cooperative idea. What happened that made you take that venture -- do you remember? A. No sir. I would not want to venture any opinion on that.

Q. I am not asking you for an opinion, but if you know, you might tell me what were the underlying facts at that time which induced the company to do such a thing. I would be glad if you would tell us. A. I don't know the reason.

Q. Was it because you were having hard times and you thought this was a chance to make a dollar to pull the company out of a hole? A. That could be a good answer.

Q. I know it could be, but is it the right answer? A. I would say perhaps, no. Oh well, I will say it is.

Q. I don't want you to say it is just to get rid of me. If you know that is the reason I do not see any harm in saying so. A. I am not familiar with the facts as they were at that time.

Q. Is there anyone here representing the company who could answer that question? A. I doubt it.



Q. Is there anyone in Calgary who can answer it? Who was the guiding hand at that time? Who can answer that question? A. My President is in Edmonton.

Q. There is no doubt that was the reason; it was an attempt to improve the affairs of the company?

A. We had better call it that.

THE CHAIRMAN: Was that the only instance in which you departed from your general policy?

THE WITNESS: Yes.

BY MR. PARKER:

Q. And had this been a successful speculation you might have gone further. Now let us take page four of the brief, paragraph (e) near the top of the page: "The memorandum of association provides that the interest of each member in the assets of the association shall be in the proportion which his holdings of reserve share certificates and participation certificates bear to the total reserve share certificates and participation certificates outstanding from time to time." Was that paragraph drafted by you or by the auditor or by the solicitor? A. That is taken right from our memorandum.

Q. Do you know who drafted the memorandum of association or whether there is a statutory form prescribed? A. I am not sure.

Q. The memorandum of association here refers to the interests of each member, "In the assets of the association." Is it your understanding that this association has substantial assets? A. Yes; they have physical assets.

Q. You appreciate what I am saying? Don't say anything you don't understand. Do you understand that the association has owned assets of its own, quite separate and





distinct and apart from what the members have?

A. Oh no, no.

Q. What you understand is that the phrase "assets of the association" means certain assets which the association holds in trust for the members? A. It could be that way.

Q. The language used in your charter is what is before us all. It treats the company as a separate legal entity the same as any other company. It speaks of its assets and what it shall do with its earnings, and uses all that sort of phraseology. Someone will say that the company is nothing but an aggregation of members. How do you understand it? A. I understand it this way. All the assets are owned entirely by our members. Now there may be some portion of our physical assets not allocated to the individual member, and this gives the member the equity of that undivided asset.

Q. Can he come in any day of the week he wants to and say, "I want my share in it"? A. No.

Q. He has to depend, first, on the judgment of the directors, and they in turn have to act according as the shareholders -- the majority of them -- in meeting duly assembled declare? A. Yes.

Q. Is that any different from the way the ordinary shareholder gets the advantage of his share of the assets of a company? A. That depends, In a limited company, the bondholders --

Q. Pardon me; I am not talking about bondholders.

A. The preferred shares, then; any undivided assets might go to the common shareholder and the preferred shareholders.

Q. Suppose there is only one class of shareholders? They would be in the same position as the members of this



company. As far as you are concerned you can see no difference from the standpoint of the assets of the company? Are you reasonably familiar with the set-up of an ordinary limited company? A. Fairly so.

Q. You are not speaking as one who has no knowledge at all. You have a reasonable understanding of the difference between the two types of company? A. Yes.

Q. And that is your view? A. Yes.

Q. Take paragraph (d) under (2) on the same page -- page four. You say: "Authority is given the association to make certain deductions from the proceeds of the sale of the members' milk or cream for capital or other purposes of the association." Let us suppose that is done and certain deductions are made for these purposes, specified for capital -- working capital. A. Working capital could be one of them.

Q. Or capital to enlarge plant? A. Or reducing outstanding liabilities.

Q. In fact, almost any purpose which the directors may deem fit? A. Yes.

Q. That being so, you go on to say that, having made these deductions and used them for these purposes, it is not a gift by members to anyone; they still retain an interest of some sort in it, and to evidence that interest the company issues these certificates? A. That is right.

Q. And there are two kinds issued. You deal with them. There are two types of certificates; one you call reserve share certificates and the other participation certificates. What is the difference in essence between the two? Before you start to answer I can help you to this extent. They both represent, do they not, or they both





constitute I would rather say, evidence that certain portions of these deductions shall, under certain circumstances, be repaid to the respective producers?

A. That is right, that part.

Q. Then why is it necessary in the set-up, and what purpose does it serve to have two types of these certificates -- because as I understand it, though I may be wrong, the surplus represented by the proceeds is really a part of the deduction? A. No, no.

Q. It is not? A. No, altogether different.

Q. That is what I want to get at. The reserve share certificates represent deductions? A. The deductions only.

Q. The participation certificates represent the producers' share of the earnings of the association?

A. Yes.

Q. Does this association make earnings? A. Yes.

Q. Does it make a profit? A. We will call it earnings.

Q. Don't agree merely for the sake of getting on with the story. A. We will call it earnings.

Q. Why do you call it earnings? A. Because it is savings we made for our members in that margin of spread allowed us by the Utility Board to handle and sell milk in the city of Calgary.

Q. You use two expressions; these earnings are savings, you say. Would it be equally true to say that these savings are earnings? A. In my opinion they are the same, earnings and savings.

Q. In what way do these terms -- or either of them -- differ from profits? Would it be correct to refer to them as profits? A. I think it would.



Q. Have you a clear idea in your mind as to what that word profits means? Have you studied it? I would be prepared to say no.

Q. You are unable to distinguish them. You have the same idea in mind when you use the word earnings and the word savings in dealing with this matter? Whatever they mean, they mean the same things? A. Yes; to me they do.

Q. Have you talked that point over with any of your cooperative associates or friends? Do you know whether that view is held by others? Is it a common view? A. I have not discussed this with others.

THE CHAIRMAN: Nor have you read the decisions of the House of Lords.

THE WITNESS: No, I have not followed that.

BY MR. PARKER:

Q. Anyway, that is the way this company works, and that is what these two sets of certificates indicate? A. That is right.

Q. Your company has no share capital? A. No.

Q. Never had? A. No.

Q. There were two series of these reserve share certificates? A. Yes.

Q. The first series were called in? A. Yes.

Q. The first series are paid off or being paid off through the revolving plan? A. Yes.

Q. Is this the one you have attached to your brief? A. That is series "A".

Q. That is the one that was called in? A. That is the one issued to cover the ones called in.

Q. Speaking of the first issue, were they interest-bearing certificates? A. At the time these original



shares were issued, -- well, perhaps I should say there were eleven certificates issued the first eleven years. These were called in in 1942, effective November 1, 1941. These were called in and cancelled and replaced by reserve share certificates, series A, and that series A is the one held by our members at the present time.

Q. Were the series issued later called in? Were those interest-bearing certificates? A. No.

Q. The series A now outstanding are interest-bearing. Why? A. That came about in this way. We put the company at that time on the revolving fund basis and a few of our older members were leaving the company about that time. There was no provision in the old memorandum for marketing agreement giving a brief and clear-cut cut-off when they discontinued doing business.

Q. What do you mean by that? If a member wanted to retire, there was no clear-cut provision whereby he could get his share? A. Yes. In the reorganization it was decided to set up a system whereby a man could quit at any time and know exactly what his interest in the association was at the time.

Q. And so that he could not only know what it was but get it? A. Yes.

Q. And get it as a matter of right, or depending upon whether the directors thought that he should get it? A. The contract clearly states how that man can quit the business.

Q. Was it at the discretion of the directors or was it an absolute right given to him? A. I believe that in our marketing agreement he has full right.

Q. That is the agreement attached here? If it is, we will see it. At any rate, that is how these two series



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were issued? A. Yes, and it was decided then to be 3 per cent.

Q. Why? A. These members felt that they had carried the burden a long time, eleven years.

Q. What burden? A. Of supplying money to start the company off.

Q. That raises in my mind a question as to why men were willing to loan large sums of money for years and years without interest. It seems contrary to human nature as I understand it. That is not the common practice and I suggest to you that although, in form, they lent money without interest, in fact and in substance they did not. They got something back for the use of the money, something that is very valuable. They got it back under the guise, I would say, of an increase price in the case of the producer on a lower price in the case of the consumer. What do you think of that? A. So far as earnings are concerned, I think you are right.

Q. So there is a bit of a fallacy then in the contention that these men have been lending money to the association without interest, if you get behind the form and get to the substance of the thing. Do you agree with that? A. No.

Q. Let us have a word about participation certificates. That, you say, represents the producer's interest in the earnings of the company, which we have already dealt with. Does that bear interest? A. No.

Q. Why did the company make a distinction and allow interest on one and not on the other? A. I don't know the reason for it. They just agreed not to pay interest.

Q. These earnings belong to the producers. Are they allocated to them at the end of the year? A. Yes.



Q. That is equivalent to a loan? A. They are not the same.

Q. They are equivalent to leaving money in the hands of the company for future purposes, and it is money which really belongs to the producer and he leaves it in this case without interest. In fairness or in logic, why should there be any difference? Do you see any?

A. Perhaps I can't see any particular reason for it other than the fact that perhaps they did not have the money to pay it.

Q. What became of it? A. Perhaps they did not have the money to pay the additional interest.

Q. Are these participating certificates negotiable? A. No.

Q. Are the reserve share certificates negotiable? A. No.

Q. What happens in case a man dies? A. We have that quite often.

Q. Perhaps it is dealt with in the documents. Has his estate the right, upon his death, to come and get paid off just as they would cash in a life insurance policy?

A. No. It could perhaps be got on application. They are entitled to a transfer in any case to the estate and they could make application to the Board of Directors and at their discretion they could secure them.

Q. Have they the same right they would have in the case of an insurance company? If a man had a policy for the benefit of his family they could get the money. It is not a matter in the discretion of the directors. If they do not pay it they can be sued. That is not so in the case of this transaction. They are dependent, are they not, upon the discretion of the directors? A. Yes.





Q. That is so both upon the individual's retirement in life and upon his death, so far as his estate is concerned? A. Yes.

BY MR. ARNASON:

Q. What is the practice followed by the directors in paying out interest in the case of a deceased member? Is it the practice to do so as soon as the estate is settled? What is the practice, regardless of discretion on the part of the directors? A. I think there were four cases. Two of them left the interest in and it will revolve out in the ten-year period; in the other two cases they were redeemed for cash.

Q. And that was done at the request of the executors of the estate? A. Yes.

BY MR. PARKER:

Q. Turn to page six. Dealing with preferred shares you say: "The association for some time past has been financially able to redeem all these shares still outstanding but has preferred not to do so, believing that the business of the association is promoted by the fact that the said shares are held by patrons." Where did you get the money to pay the interest on those shares? A. Out of earnings.

Q. Out of the company's earnings. A. Yes.

Q. It is true then that the amount covered by the share certificates does not represent all the earnings of the company. It is only surplus earnings after paying overhead and interest on preferred shares? A. Yes.

Q. You mention public utilities again and business methods. You say that the Board of Public Utility Commissioners "is now empowered to fix prices paid to the producer as well as paid by the consumer in the said city."



Do you mean minimum prices or actual prices?

A. Minimum prices.

Q. Does the Board of Public Utility Commissioners also fix the price for the non-cooperatives? A. In the controlled areas, yes.

Q. What are they? A. The control that the Utility Board exercises at Calgary is in a certain area.

Q. That is the area in which your company operates? A. Yes.

Q. Are there private companies in that area? A. Yes.

Q. The Public Utilities Board fixes their price? A. All prices.

Q. Both producer and consumer. It is fixed by the Board for your company as for the private company? Does not that result, in the final analysis, in giving your producers a price for their milk greater than that fixed by the Public Utilities Board? A. Yes.

Q. How do you explain that? A. Because the Public Utilities Board only fixes minimum prices. They don't say I cannot give them a dollar more.

Q. How many subsidiaries does your company control? A. None.

Q. Never has? A. Well, we had that subsidiary I was telling you about.

Q. It is not in the picture now? A. No.

Q. At the bottom of the same page you say: "When delivering milk to consumers in the Calgary district it was found desirable to supply butter as a convenience to its patrons." This company started as a milk dealer. That was its primary purpose? A. Yes.

Q. And because it was convenient and you had ample power under the charter to branch out by going into the



butter business you were enabled to pay a better price for milk? A. No; I would not say so.

Q. In other words, you thought that by going into the butter business as a new branch you could make a dollar?

A. Yes, that is right.

Q. And you have succeeded in making something?

A. That is right.

Q. And I suppose if it became desirable to go into the making of cheese you would do that? A. That is right.

Q. And if it became desirable to manufacture machinery for the making of cheese you go into that for the benefit of the milk producer? A. Oh, I don't know.

Q. You would not go that far? A. I would not go as far as machinery.

Q. Will you turn to page eight dealing with another loan when you applied to the provincial government for a special loan? A. That is true.

Q. Perhaps I misunderstood you before, but I understood that the only government assistance this company ever got was the original loan guarantee. But there was this additional loan? A. Yes.

Q. How does that come about? Were you having hard sledding at that time? A. Very hard.

Q. And the government came to your assistance? A. Yes.

Q. Do you know of any independents at that time who were having hard sledding, or were they all having it? A. At that particular time, I am not aware what the situation was in Calgary.

Q. When was this loan? A. It was 1929-30 when this company was getting started.





Q. Right at the start? A. Right at the start of the company.

Q. Do you know of any loans made on the same basis to independents? A. From this fund? I believe there were several loans made from this fund.

Q. Perhaps I don't understand this. The provincial government came to the assistance of the association, you say, with a loan of \$14,500 from a fund known as the Wheat Board surplus fund. What is that? A. This was a fund set up from the surplus left over from the old Wheat Board after the first Great War. It was set up and allotted to the different provinces in the west, the grain provinces, and in the case of Alberta, I believe, if my memory serves me rightly, it was set up for the purpose of promoting cooperative endeavours.

Q. The only reason I mention it is that this company got some provincial government assistance in time of stress when it needed assistance. It got that assistance?

A. Yes.

Q. And you have since paid that loan back except for \$4,500, and to raise the money to pay it back you used the earnings of the company. Is that a fair way to state it? A. Yes.

Q. Now will you turn to your balance sheet. I hope you will bear with me if I ask you questions you don't understand because the explanation may likely be that I don't understand what I want. You have set out certain facts there and it takes two sheets to cover the period?

A. Yes.

Q. As to the current assets of this association, the figures speak for themselves. At the end of 1930 you have so much and they go up and down. There are variations



right up to date, the net result being that at October 31 1930 they stand at \$25,000 and in 1944 at \$60,000. Is that right? That is an increase in the company's assets over that period? A. Current assets, yes.

Q. That is, the current assets in 1944 were \$60,000? A. Yes.

Q. In the second line you are supposed to give plant and equipment at cost. What bothers me there is that the plant and equipment as cost in 1930 was \$145,000 whereas in 1942 it has gone down to \$92,000. A. Less depreciation.

THE CHAIRMAN: 1944.

BY MR. PARKER:

Q. 1944, I should say. It is \$92,000. A. Yes, less depreciation.

Q. Is that a true picture -- that the assets of this company are in fact worth less in 1944 than in 1930?

A. Because we have deducted depreciation reserve every year from 1930 to 1944.

MR. NASH: You say it is at cost?

THE WITNESS: At cost less depreciation.

BY MR. PARKER:

Q. Are you in a position to tell me what basis of depreciation you have been using for these years? You have depreciation reserve carried down each year? A. Yes.

Q. In 1930, \$9,207. How was that arrived at? A. Depreciation?

Q. Yes. A. We have allocated depreciation expense.

Q. That is not what we have here. The reason I am asking is because Mr. Nash, who is advising me on these things, says that this is not quite complete. Perhaps you





can tell me on what basis you calculated your depreciation, because it varies. A. It varies on a percentage basis on all the various equipment, whether it is horses, land, buildings and so forth, from 3 per cent upwards.

Q. Is your auditor present? A. Yes.

Q. I suggest that in dealing with the balance sheet you and your auditor might get together with my auditor and if there is anything that is not clear to us we can get it later in the day. That would save a good deal of time. A. Yes.

BY MR. NADEAU:

Q. Would it be possible to have a copy of the early marketing contract? A. Yes, I can supply that.

Q. Could we also have copies of all your share certificates series A and series B?

BY MR. PARKER:

Q. That is the two sets called in? A. It is possible that I may have the cancelled ones.

BY MR. NADEAU:

Q. I would like to have those also, if possible. A. Yes; I will supply that.

Q. Have you any agreement with the Southern Alberta Dairy Pool regarding the disposal of your milk surplus?

A. No; there is no agreement on that.

Q. On what basis do you deal with the Southern Dairy Pool? A. It varies from time to time. The surplus that we might separate into fat and sell to them would be at the current market price plus a small commission allowed for handling.

BY MR. ARNASON:

Q. In connection with the variation in the current assets from year to year, some of that variation would be



due to the varying amount of stocks you have on hand such as butter? A. Yes.

Q. At the end of each year? A. Yes.

BY MR. PARKER:

Q. Will you be good enough to meet Mr. Nash with your auditor and give him any information you have later in the day and we might have one or two questions to clarify it. A. Yes.

BY MR. VAUGHAN:

Q. There seems to be a difference between the terms used in the memorandum of association and those in the agreement. In one case you are said to buy and sell and in the other you are described as agent or factor. What explanation is there of that? A. I am afraid I cannot answer that question.

THE CHAIRMAN: What do you understand by agent and factor?

THE WITNESS: We are acting as agent for our members, that is, the association. We are acting as the factor in carrying out their business. That is my interpretation but I may be wrong.

BY MR. ELLIOTT:

Q. These deductions for which your company issues certificates are now usable at the discretion of the Board of Directors, pretty largely for any purposes within the company's charter. A. Yes.

Q. And need not be returned for ten or fifteen years. Do you attach great importance to that circumstance?

A. At the present time, yes, Mr. Elliott. We are trying to revolve ourselves on a ten-year basis. My object is to reduce it as fast as possible to a smaller cycle to take care of members who are perhaps retiring.



Q. What I was getting at was this: Would you consider that your position was as strong if, instead of having these funds, you had strictly a loan repayable as of a certain date to the members? Would you consider your position in that case would be as strong as under the present set-up? A. No. I think our present set-up is stronger.

Q. Would you give an opinion on that? A. I would not like to give an opinion.

BY MR. VAUGHAN:

Q. In this agreement the reserve share certificate has no face value. What was the purpose of having no face value? A. I am not sure how that came to be there.

Q. It is just a blank. A. You mean the certificate is blank?

Q. Yes. A. No. We fill it out; it shows on the certificate the amount.

BY MR. PARKER:

Q. Is there an amount filled in? These are blank forms. A. We fill in the form showing the amount of the deduction.

BY MR. VAUGHAN:

Q. Is the value fixed at maturity or at the time the certificate is issued? A. At the time the certificate is issued.

Q. That is the value which is paid back. When it comes due that is what is paid? A. Yes.

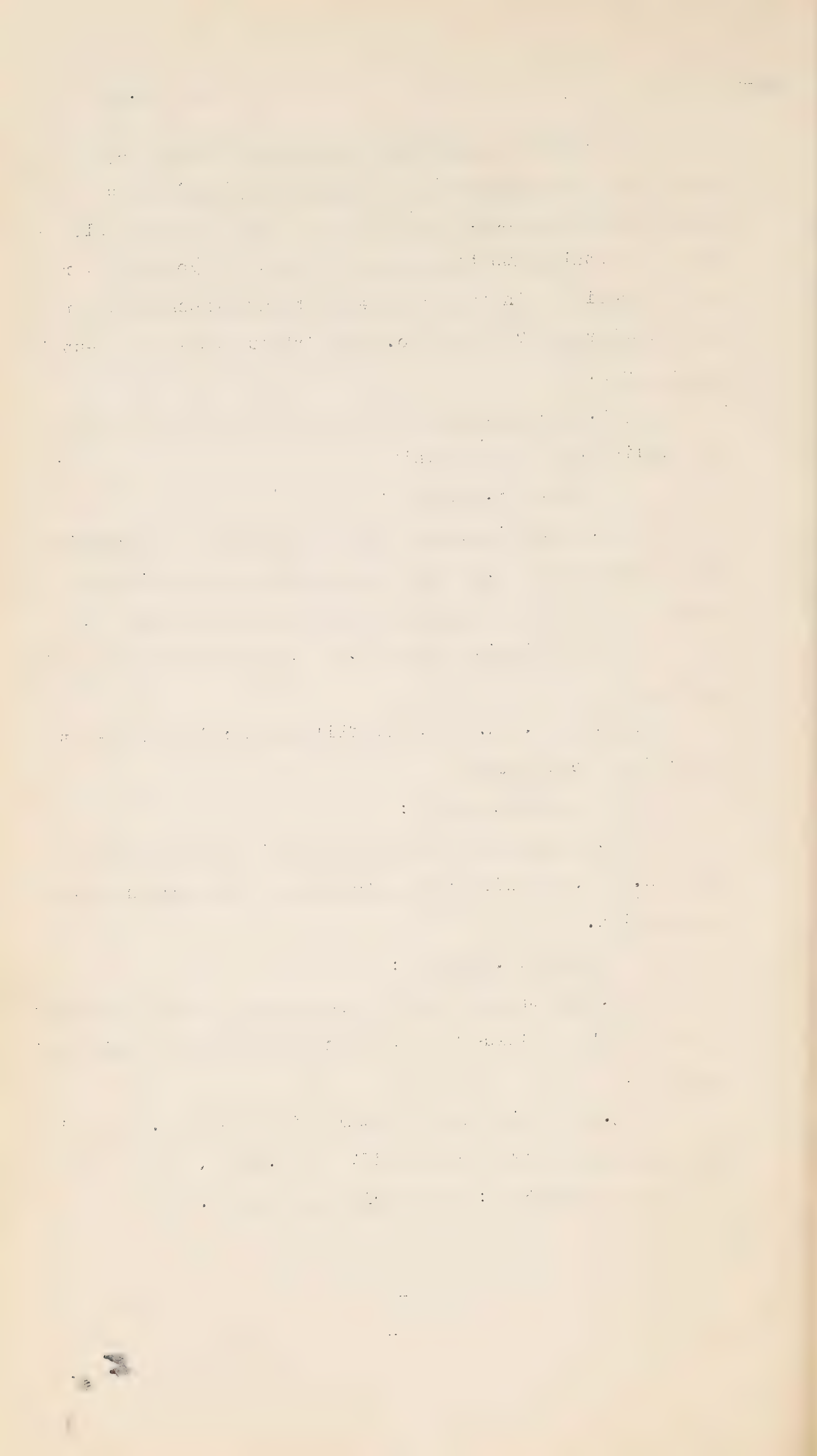
THE CHAIRMAN: That closes the case.

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CHRISTIAN TOPPENBERG,

Manager,  
Southern Alberta Dairy Pool Limited,  
having been duly sworn testified  
as follows:

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BY MR. PARKER:

Q. What position do you occupy? A. I am manager of the company.

Q. How long have you been manager? A. Since the fall of 1937.

Q. Prior to becoming manager, were you associated with the company? A. For a short time I was plant superintendent for a few months. I came previously from the Central Alberta Dairy Pool.

Q. What business were you engaged in prior to that? A. Creamery.

Q. You have been in that business all your life? A. Ever since I was fifteen years of age.

Q. You are reasonably familiar with it? A. I should be by now.

Q. I believe you have some information to give to the Commission? A. Yes, I have a brief.

Q. Will you read it.

THE WITNESS: It reads as follows:

"Introduction

"This Association is engaged primarily and mainly in the manufacture of butter from cream delivered to it by its members and the sale and distribution thereof. Three years ago the Association commenced to pasteurize and market honey produced in the province. Honey producers desiring to market their honey through the Association were permitted to become members. This business shows



promise of an increasing volume.

"Cooperative marketing of milk and cream products was organized throughout the province at about the same time in three zones as outlined in brief submitted by Northern Alberta Dairy Pool Limited.

"History and Organization

"(1) During the early part of August, 1928, meetings of the members of the Calgary District Dairy Producers Association and the Huxley-Grainger Dairymen's Association were held at Calgary. These meetings appear to have been attended also by the Honourable George Hoadley, Minister of Agriculture and Mr. Malin, the then supervisor of co-operatives. As a result of these meetings it was decided to form the Southern Alberta Dairy Pool Limited to take over the business of the said two above named associations.

"(2) This Association was incorporated on the 14th of August, 1928, under the provisions of the Co-operative Marketing Associations Act of the Province of Alberta and now operates two creameries, one at Acme and one at Calgary, at which it manufacturers into butter the cream produced and delivered to it by its members. As stated above it has also acted in recent years as marketing agent for members engaged in the production of honey.

"(3) The history of cooperative development in the dairy field has been outlined in the brief filed by Northern Alberta Dairy Pool Limited and is not repeated herein.

"(4) The Memorandum and Articles of Association disclose the following salient features:

"(a) The objects of the Association are declared to be to act as agent and factor to receive and take delivery of, handle, mix, manufacture into butter or cheese or milk products, grade, store, transport, market, sell or otherwise





dispose of the cream delivered to it by members of the association, to enter into any contract or arrangement whatsoever for or incidental to the cooperative selling or marketing of dairy and poultry products. To act as mercantile agent as defined by and within the meaning of The Factor's Act of the province of Alberta.

"(b) A member has but one vote.

"(c) Clause 4 (a) of the Memorandum of Association provides as follows:

'The Association is to have no share capital.

The interest of each member is not to be the same as that of every other member, but shall be determined from time to time by the proportion which the deliveries of milk, dairy or other products of such member shall bear to the total deliveries of all members. Such proportion shall be evidenced by the proportion which his holdings of participation certificates then outstanding, or if no participation certificates are then outstanding the said proportion shall be calculated in such manner as the directors may by by-law determine.'

"(d) By section 40 of the Articles of Association it is provided that 'The directors shall market the produce of their members as a cooperative and under an obligation to pay them the proceeds from the sales on the basis of quantity and quality less necessary expenses and reserves. Any surplus funds from the sale of members products remaining in any year after the payment of the initial payment and of operating expenses and after setting aside such reserve or reserves as the directors may deem necessary, shall be held for the benefit of the members and shall be returned or paid to the members as a further payment on account of



the sale price of said products at such time and in such manner as the directors in their discretion may deem expedient.'

"(5) The territory served by the Association is divided into five districts, each district being privileged to elect five delegates. The delegates in turn select the directors of the Association. Each member has one vote only and each delegate one vote only. At the present time there are approximately 4,000 members of the Association who are producers of cream or honey or both. The proceeds derived from the sale of honey are distributed to the honey producers and the proceeds from the sale of butter manufactured from the cream delivered by the cream producers is distributed to those producers.

"(b) From its incorporation in 1928 to the year 1936 the Association operated on the basis of a standard marketing contract with its members, a copy of which is submitted herewith. The terms of that contract when read with the Memorandum of Association show clearly that the Association was intended to function as marketing agent only for its producer members. The contract also contained the usual terms and conditions characteristic of such marketing contracts. These include:

"(a) The producer agrees to deliver all milk or cream to the Association for a period of five years.

"(b) The Association is appointed agent and factor within the meaning of the Factor's Act to receive and take delivery of members' cream and to handle and market the same.

"(c) The Association is empowered to borrow money and for that purpose to give security on the said cream.

"(d) Authority is given the Association to make



certain deductions from the proceeds of the sale of the members cream for capital purposes (clause 10).

"(e) Reserve share certificates shall be issued by the Association representing such deductions and shall be redeemable at the discretion of the directors.

"The rights mentioned in (d) and (e) above were never exercised.

"(7) At the outset of its operations the Association purchased the Mayfair Creamery in Calgary from Mr. Larson and operated in those premises for a short time until new premises were acquired.

"In 1929 this Association, together with Calgary District Milk Producers Association Limited, which later changed its name to Co-operative Milk Company Calgary Limited, decided to apply to the government of Alberta under the provisions of The Co-operative Marketing Associations Guarantee Act for loans sufficient to provide premises and facilities for the two organizations. The details surrounding this transaction have been outlined in brief filed by Co-operative Milk Company Calgary Limited. However it should be noted here that this Association procured a loan under the provisions of the Co-operative Marketing Associations Guarantee Act, of \$77,400 to finance its share in the connection.

"The operations of the Association were confined to the said premises so acquired until the year 1939 when the Association purchased a creamery at Acme from Central Alberta Dairy Pool, the other two dairy pools work in close harmony with this Association. As a matter of fact Mr. C. E. Christiansen who was Manager of the Northern Alberta Dairy Pool Limited has since 1938 acted in a general supervisory capacity over this Association.





"(8) As will be shown herein the basis of membership was founded upon the execution of a standard marketing contract until the year 1936. During those years the membership fee was the sum of \$2.00. In 1936 the contract basis of membership was abandoned, and since, the qualification for membership has been the delivery of cream to the Association and the payment of a membership fee of \$1.00.

"(9) Though provision was made in the marketing contract for deductions from the proceeds of the sale of cream delivered by its members, this right has never been exercised by the Association and in fact no such deductions were ever made. Apparently the Association intended to meet its liabilities to the bank by instituting the principle of the revolving fund with respect to the allocation and distribution of surplus earnings each year. Because of losses incurred during one stage of its operations the Association has not made the progress it anticipated in this regard and there was still due and payable on the said loan as of the 31st day of January, 1944, the sum of \$61,675. It should be explained here however that in addition to the original loan of \$77,400 hereinbefore referred to that an additional loan of slightly over \$6,000 was obtained in connection with the purchase of the Acme plant in 1939 and also a loan of \$10,000 for working capital was made by the provincial government. The balance of \$61,675 represents the balance remaining unpaid with respect to all three loans. It is the intention of this Association to reduce this loan by paying a further \$7,000 at the close of its fiscal year ending January 31, 1945.

"Business Methods and Operation.

"(1) The creamery business operated by the Association



is conducted along usual lines whereby cream is delivered by its members and manufactured into butter. The Association acts as its own wholesaler in disposing of the butter to the retail trade and to the Department of Munitions & Supply.

"An interesting phase in the development of business has been the handling of honey. Thus the growth of a new industry in the province has been assisted. Under the provisions of Section 47 of the Articles of Association honey producers who market or sell their product through the Association shall be entitled to membership. Their interest in the property and assets of the Association is limited to the payment of deferred participation certificates held by them. For the purpose of representation at any general meeting of the Association all such honey producers, wherever resident in the province, are deemed to constitute one district and are entitled to elect one delegate for each one hundred members or portion thereof. The district so formed shall be entitled to elect a director to the Board when there are sufficient members therein to elect five delegates.

"Honey is delivered to the Association in its natural form as taken from the hive. It is then pasteurized and packed, in the Association's plant and marketed through channels developed by the Association. It is interesting to note that this new venture shows every sign of success. Only 11,000 pounds of honey were delivered by producers in 1942. This has grown to 288,000 pounds in 1943. Records are not, as yet, complete for 1944, but it is safe to say that there has been a substantial increase.

"(2) From 1928 to 1934 the operations of the Association were quite successful and surplus earnings





were distributed to the members in accordance with the terms of the marketing contract, partially in cash and partially in participation certificates. The cash retained during these years and for which participation certificates were issued amounting to some \$24,000 was used to reduce the bank obligation guaranteed by the government.

"(3) In 1934 competition became very keen. Prices to producers were increased and certain trading practices in the sale of butter appeared resulting in a series of losses during the years 1935 to 1938 inclusive, with the result that no distributions could be made to members during those years.

"An operating loss of over \$33,000 accumulated during that period and of course no reduction could be made in the amount of participation certificates issued prior to 1935.

"(4) By 1936 the effect of this competition had made it extremely difficult to get producers to sign contracts binding them to deliver all their product to the Association and it was then decided to abandon the contract basis of membership. An active campaign for additional members by way of radio and field work was entered into, with the result that the volume of business was materially increased and operating surpluses again appeared in 1939 and the years following. It was during this period of stress that the provincial government came to the assistance of the Association with a loan of \$10,000 for working capital. This is evidence of the government's support to the cooperative movement and its belief that cooperative marketing of farm produce is a valuable factor in the social and economic life of the province.

"(5) With the consent of the members in annual



meeting the surpluses earned during the years 1939 to 1941 inclusive were used to reduce the operating deficit from \$33,000 to \$19,000. Notwithstanding the failure to distribute surpluses the membership continued to grow during those years.

"(6) With the fiscal year ending January 31, 1943, the Association again commenced making distribution of operating surpluses to its members, half in cash and half in the form of participating certificates. The same was done at the end of the following fiscal year ending January 31, 1944 and will no doubt be done for the fiscal year ending January 31, 1945.

"The cash retained and represented by the participation certificates is used to reduce the bank loan guaranteed by the government.

"Since 1942 the operating surplus each year has been completely distributed to members in cash or participation certificates. As yet the older participation certificates issued prior to 1934 are outstanding.

"No interest is paid on any participation certificates whether old or new.

"(7) An examination of the Association's operating statement for the past two or three years will disclose a profit from the sale of poultry and eggs. For the last fiscal year its apparent profit was \$3,562.14 at the Calgary plant and a loss of \$382.71 at the Acme plant, making a net apparent profit of \$3,179.43, in its operations.

"By way of explanation it is necessary to point out that the Association does not engage directly in the marketing of poultry and eggs. Some time ago a cooperative organization was set up by the government of the



province of Alberta, known as the Poultry Marketing Board for the purpose of cooperative marketing of eggs and poultry. At the request of the Poultry Marketing Board this Association made available its plant, personnel and marketing facilities for the handling of poultry and eggs. The Association charges a commission on the handling of these products, which it is felt is only sufficient to meet the additional expenses encountered from the handling of poultry and egg products. The Association has not attempted an exact cost accounting system but in the preparation of its financial statement has more or less arbitrarily allocated 10 per cent of total costs to the poultry and egg business, with the result that the Association's financial statement indicates some profit from the handling of these products. It is felt however that were a careful analysis of expenses made that there would be no profit whatever in this connection or at the most a very small amount. In any event the amount earned from this source constitutes a very small charge for the use of the plant and premises of the Association, and the time of its personnel.

"On receipt of cream from a producer, the Association makes an initial payment which bears a close relation to the current market price. After the close of its fiscal year the Association allocates all surpluses to the members entitled thereto in proportion to their deliveries. The final settlement of such distribution of surplus takes the form of a cheque representing the cash distribution and a participation certificate representing the deferred balance of such distribution.

"(8) The amount transferred annually to depreciation account is calculated according to the scale of percentages





allowed by the Income Tax authorities for properties of various kinds. The reserve for bad debts is calculated annually on a fair and reasonable basis and after due consideration of accounts payable. The amount carried forward as surplus is made up of odd amounts from year to year. After allocation of participation certificates it is not feasible to distribute surplus earnings to the last dollar.

"No attempt has been made to allocate the amounts carried forward to depreciation or bad debt reserves or as undistributed surplus. The Association assumes that these items are all subject to the provisions of the Memorandum of Association -- that the interest of each member in the assets of the Association is in the proportion which his holdings of participation certificates bears to the total amount of such participation certificates.

"The Association in relation to the Income War Tax Act.

"(1) From what has been submitted the following conclusions appear:

"(a) The Association is composed of farmers or dairy men producing cream or honey or both.

"(b) That the Association is organized and operated on a cooperative basis under the provisions of the Co-operative Marketing Associations Act of the province of Alberta.

"(c) The Association is obligated by its Articles of Association (clause 40) to pay its members the proceeds of the sale of their products less only operating expenses and necessary reserves.

"(d) That the Association acts as factor or agent only in the marketing of produce delivered to it by its members.



"(e) The volume of business done with non-members is far less than the 20 per cent allowed by the Income War Tax Act.

"(f) The Association each year allocates to its members proportionately the full proceeds of all sales made less only operating expenses and necessary reserves.

"(g) The Association has no share capital.

"(h) No interest is paid on participation certificates.

"In view of its position as above set out the Association has always maintained that it is exempt from tax under the provisions of Section 4 (p) of the Income War Tax Act and has never paid any income tax.

"(2) The Association in view of its obligations to distribute all surplus earnings to its members contends that it has no profits to be taxed, and is opposed to any amendment of the Income War Tax Act which would have the effect of taxing cooperatives.

"Conclusion

"The Association feels that it is performing a useful function for members in providing an outlet for their products. At the same time its methods contribute to stability of prices and marketing conditions. Thus a sense of security and contentment is developed among the dairy producers in its territory. This contribution should be of great benefit in the post-war years, when under rehabilitation and reconstruction plans, there will be a large increase in the numbers of small producers, all needing facilities for the orderly marketing of their products.

"Dated at Calgary, Alberta, January 20, 1945.

"Respectfully submitted,

Southern Alberta Dairy Pool Limited,  
Per: C. Toppenberg, Manager."





Documents filed with brief:

- (a) Copy Memorandum and Articles of Association.
- (b) Copy Marketing Agreement (used up to year 1936)
- (c) Copy of Participation Certificate
- (d) Financial statements for the fiscal year ending January 31, 1944.

.....

BY MR. MILVAIN:

Q. There are one or two questions I would like to bring out. By the way, Mr. Toppenberg, you were connected with the cooperative movement in Denmark? A. Yes. There was no other way in being a creamery man there than by being connected with it.

Q. After you left Denmark were you connected with cooperatives anywhere else? A. In Germany for two years and later on in Canada. In between that I was in England and Ireland but not connected there with the cooperative movement but with the creamery business in private firms.

Q. Generally speaking, you can say you have been occupied in the cooperative field almost throughout the whole of your life? A. Yes, except for about four years.

BY MR. PARKER:

Q. Does your company come under the control of the Board of Public Utilities? A. No.

Q. In that respect this company is different in its operations from the one we were dealing with this morning? A. Yes.

Q. I understand you to say in your brief that this company has never at any time made deductions.

A. That is true -- that is, from the price paid at the time of the receipt of the goods.



Q. Your method of operation is what we are interested in. You have a written contract? A. We had a written contract until 1936.

Q. Have you not now? A. No. There is no written contract now.

Q. Where do we go to find the terms under which your members deliver milk to your association? A. Or cream?

Q. Or cream? A. Well, the articles of association and the memorandum set out all the conditions.

Q. If we study them we shall find out the terms? A. Yes.

Q. From what time I have had to look at them I can find nothing to indicate how the amount which you refer to as the initial payment which you make to the supplier is determined. A. As we have said here, the initial payment is what might be considered. There is no set price but it is what we say in our brief.

Q. Just a moment. I know what you said in your brief; tell me something that is outside the brief. Am I right in saying that there is nothing in the articles which will explain how you arrive at the initial payment?

A. Yes. I think that could be said.

Q. So that the amount of the initial payment is fixed by what the directors consider the going price to be? A. Yes. The policy is to pay what is considered fairly close to the going price.

Q. That is just the point. How close, and how do you ascertain the going price? A. In all cases we would ascertain it by paying a price which would not be out of line with what the market price of butter is after giving consideration to what it would cost us to make cream into



butter. We would obviously not wish to overpay.

Q. Would there be any relation between the price you pay and the price the Public Utilities Board fixes in those areas where they do fix the price? A. No; there is no relation to my knowledge.

Q. So that it is purely in the discretion of the directors? A. Yes.

Q. In fixing that price two things have to be determined, the first being what the going price is? A. Yes.

Q. And how much less than that they will pay to the producer. Having fixed the going price, how much do they take off that to arrive at the final figure? A. We do not calculate it like that. The fact is that the business is rather competitive, as you know by now, and consequently we must pay a price that is fairly well in relation to what might be considered the market price.

Q. You pay that? A. Yes.

Q. That is the end as far as the producer is concerned, for that stage at any rate. A. You can't go to the Board and get that price.

Q. You turn the cream into butter? A. Yes.

Q. And carry on as your best judgment dictates and sell the butter, and in the process you have some earnings? A. Sometimes.

Q. I am talking about the years you do have earnings. A. Yes.

Q. It is out of those earnings that you either pay directly to the producer his share of earnings -- what you call his share -- or issue certificates as evidence that you are holding something belonging to him? A. Yes.





Q. That is a fair way to say it? A. Yes.

Q. You are different from the company we were dealing with a few minutes ago in this respect, that you have no deductions in your hands. A. No.

Q. And you have no occasion for issuing share reserve certificates? A. That is right.

Q. Do the members leave in your hands any amount for reserves? A. The regular reserves we must set up for depreciation of plant and equipment and so on.

Q. As anybody would do? A. Yes, as we must, of course.

Q. As you must? Why? A. Because it is good business practice.

Q. Not by reason of any statute? A. It is good business practice.

Q. Much the same as any limited company would do? A. Yes. Equipment does wear out and there is need of replacement at some future date.

Q. And your reserves are accumulated out of your earnings? A. Yes; that is it.

Q. Where do we go to look for the obligation to pay these earnings or any portion of them to the members? A. To our memorandum.

Q. Can you point to the clause? Is it the memorandum or the articles? A. I am afraid I could not pick it out right now.

Q. It is clause 40 of the articles. A. Yes; there it is. It is mentioned.

Q. This is the clause in your articles dealing with the earnings of the association? A. Yes.

Q. You understand what I mean. I am trying to find out whether these are earnings of the association or



of the members? A. I think I would argue the point that the association and its members are the same thing after all.

Q. On that theory only do they belong to the members?

A. Yes.

Q. If that theory is wrong, then they belong to the company? A. I don't think it could be that way.

Q. I quote from your articles of association: "The directors shall market the produce of their members as a cooperative and under an obligation to pay to them the proceeds from the sales on the basis of quantity and quality less necessary expenses and reserves." You state that in your articles of association. Do you operate in accordance with that? A. Well, it certainly is our object.

Q. Do you fulfil that obligation? Do you make payments to the members in accordance with that statement in your articles? A. In years when there is a surplus earning it is used in the interests of the members.

Q. Do you operate in accordance with that or do you not? A. I am afraid I will have to proceed along the line I was going to follow. Years when we have a surplus and when the Board of Directors have not decided to distribute to members it has been for the simple reason that there was, as referred to in the brief, the necessity for capital to be substantiated by allowing these earnings to remain in the treasury of the association. Since 1942 we have distributed them.

Q. That brings out my point -- the payment is made not in order to fulfil that obligation which they are bound to fulfil; the payment is made or not made according to the discretion of the directors? A. Yes, which is in





the articles of association.

Q. Does not that very fact, that there is not an obligation to pay but that the matter is left to the discretion of the directors remove the organization from the category of what has been referred to more than once as the true cooperative? A. No, I don't think so. The obligation has not been diminished, but in a certain period of time it may be necessary for the directors to use the net earnings for other purposes than distribution.

Q. Take a stubborn man who does not care what the majority says. He says: "I want the obligation lived up to in my case." Where does he fit in? A. I don't think he would have much luck. We could not have that. It would be impossible.

Q. That would be a good way to test the question whether the obligation to pay was really something that could be enforced, would it not? A. I will agree that that question could be raised, but I am sure of one thing. Judging by the performance of other and smaller pools, it is not the intention.

Q. You have heard of the notorious road that is paved with good intentions. There is a difference between what is intended and what is done? A. That is true. It reminds me of the time I was with Central Alberta Dairy Pools for nine years. There were the same intentions that were unfulfilled and men spoke exactly as you do about promises. It is a weak point which can be argued; nevertheless other cooperatives are in the same position.

Q. It is for the Commission to decide whether it is a weak point. I just want to bring it out. As I understand it, probably quite inaccurately, an obligation, if it means anything, is something that can be enforced.



If I have an interest in something and there is an obligation whereby I can have that interest enforced, I do not expect it to be whittled away by some Board of Directors deciding that I don't know what I want and that I cannot have it. A. Suppose all our members decided to have their share; they could close the business and divide their equities in proportion to their holdings.

Q. I do not wish to enter into an argument. Let us go on. I quote further: "Any surplus funds from the sale of members' produce remaining in any year after the payment of the initial payment and of operating expenses, and after setting aside such reserve or reserves as the directors may deem necessary, shall be held for the benefit of the members and shall be returned or paid to the members as a further payment on account of the sale price of such products at such time and in such manner as the directors in their discretion may deem expedient." You have referred me to this as chapter and verse where I can find the rights of members in relation to reserves, surpluses from the sale of their products, and what not. Further: "In particular, the directors, with respect to such proportion of such final payment in any year as they deem advisable and necessary in the interests of the association, may issue to each member a participation certificate, and such participation certificate may be paid at such time and in such manner as the directors may deem advisable."

A. Yes.

Q. That is pretty wide? A. It gives them some power.

Q. But it does not give the individual member very much as against the wishes of the Board? A. At each annual meeting the directors have a good opportunity which they use, to discuss the affairs of the association.



Q. Did you ever attend meetings of shareholders of an ordinary limited company? A. No. I am sorry to say I never did.

Q. You don't know much about the way they conduct business? A. No.

Q. Do you know that as a matter of fact that is what takes place at such a meeting -- the shareholders come and ask questions? A. I will have to accept that.

THE CHAIRMAN: Would you say, Mr. Parker, that the practice is encouraged?

MR. PARKER: In some cases, no, Mr. Chairman.

BY MR. PARKER:

Q. At any rate, that is where we find the terms set out? A. Yes.

Q. Do you in fact do any buying and selling outright? A. No, we don't do that. We accept the members' produce.

Q. Do you buy the members' produce? A. No, I would not say we buy that. We accept it as their agent for manufacture into saleable products.

Q. On terms that you will be paid a commission? A. No. Are you referring to cream?

Q. The produce you buy from your members. A. We don't buy produce.

Q. The produce you receive from your members. Do you buy it or do you receive it? A. We don't buy it because we never buy anything.

Q. Do you buy from anybody else? A. No. Well, there may be some periods of time when butter has been in short supply, but that has not been for the last three or four years. But it would be only small.

Q. A word about honey. The second part of your business is distinct from cream? A. Yes.





Q. You deal with the honey producers on much the same basis as with the others? A. Yes.

Q. The point I have in mind is this. Are the proceeds from the sale of honey and the proceeds from the sale of cream kept separately, or is it all merged in one fund? A. No. We keep a very good record of how much we have earned on each item.

Q. Do you keep separate bank accounts? A. No.

Q. Do you keep separate cash accounts, one group for the honey men and one group for the others? A. No.

Q. As far as the books are concerned, they are all one unit? A. In the books we have a complete record of each type of business done, the amounts received.

Q. And the number of pounds of honey as well as the number of units of milk? A. Yes.

Q. At the end of the year when it comes time to find out, can you tell the earnings from your milk and cream business as distinct from the earnings of the honey business? A. We have not really followed them so closely that we would have an exact figure.

Q. If you kept them separate you could? A. I referred to the records of receipts; they are kept separate. But when it comes to labour, we have not kept it separate because we switch from one department to another and it would involve too much bookkeeping.

Q. But you keep records of the sale of honey? A. Yes, and report frequently to the Wartime Prices and Trade Board.

Q. But when you come to allocate or apportion the amount represented by your certificates do you take the honey producers in one block and the others in another?



A. So far we have not issued participation certificates to bee-keepers.

Q. You make certain allocations in your books?

A. We pay them an initial price. It was far below what was the current market price because this was a new undertaking and we did not know what honey would do. When we sold a certain amount of honey we would make a second payment when we had a fair assurance that a final price would be arrived at. When we finally sold all the stock we sent a third and final payment and there were no net earnings left over after that. It was all in cash.

Q. I thought you told us that the only thing you distributed to these members was your earnings, that you did not have deductions held back at all. A. We were rather referring to cream. It is somewhat different with honey.

Q. It is not true with respect to honey? A. No, because it was a new business and we were quite inexperienced. We did not even know what the price would be.

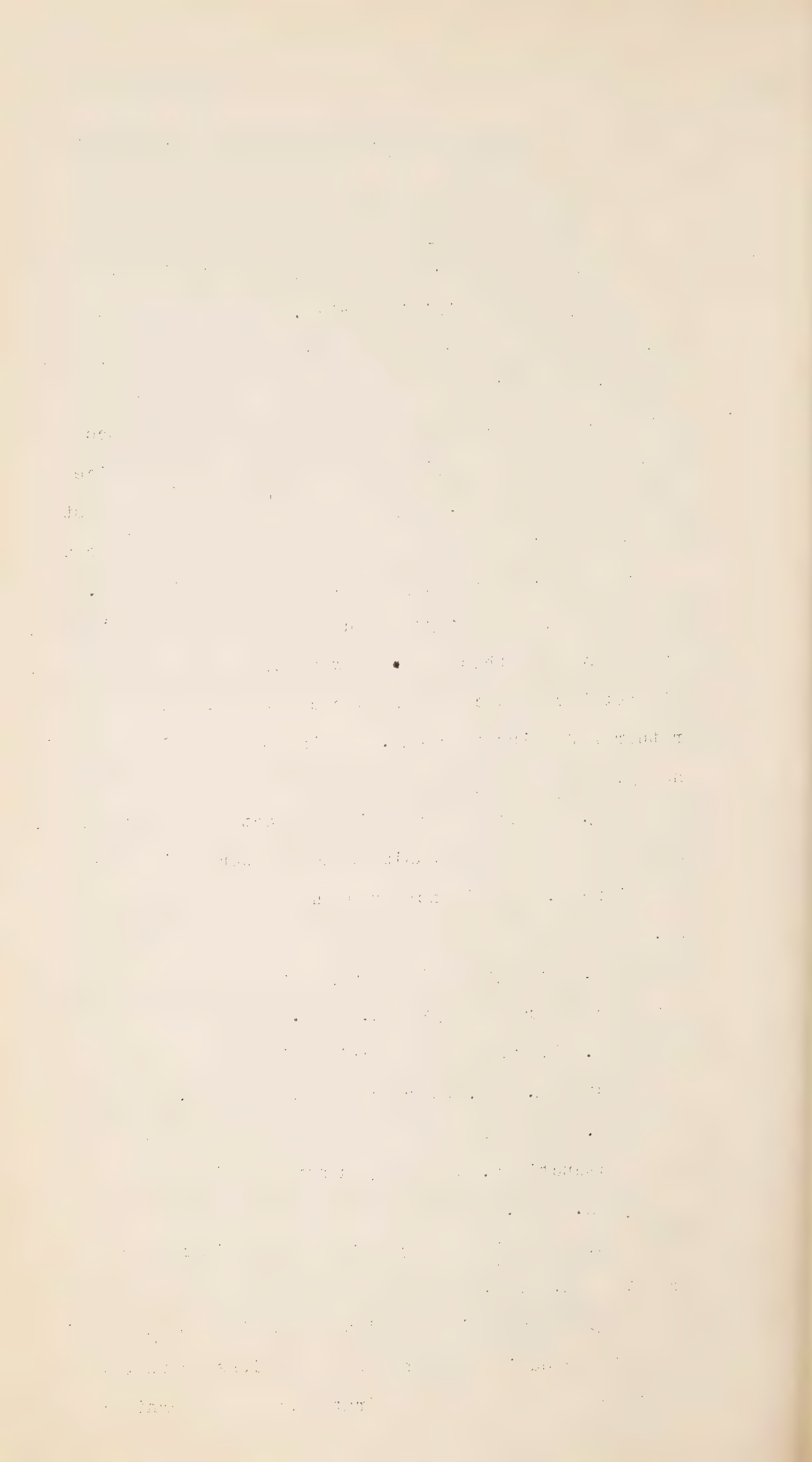
Q. When you said that you had no deductions you referred to cream only? A. Yes.

Q. Do you have deductions in respect of the honey business? A. No, there are no deductions.

Q. Then the original statement is true, that there are no deductions, so that you have earnings and nothing else? A. Yes.

Q. Both in respect of honey and in respect of cream? A. Yes.

Q. I am trying to find out whether those earnings are all merged into one block of earnings or whether the earnings from honey are separated from the earnings of





cream. A. Yes, they are separated.

Q. And the honey earnings distributed among the honey producers. A. Yes.

Q. According to the amount produced? A. Yes.

Q. And the cream earnings are distributed to the cream producers according to the amount produced? A. Yes.

Q. Is that correct? A. Yes.

THE CHAIRMAN: Is there any doubt about that?

THE WITNESS: There is no doubt about that. I was anxious to explain to Mr. Parker the difference in procedure.

BY MR. ELLIOTT:

Q. In the manner of the distribution of labour costs as between cream and butter, which you mentioned earlier, you do make some distribution of expenses against butter and the rest against honey? A. Yes.

BY MR. PARKER:

Q. But it is only approximate because they are shifting from day to day. Subject to that limitation they are kept separate? A. Yes.

Q. Turn to page four of the brief: "As will be shown herein, the basis of membership was founded upon the execution of a standard marketing contract until the year 1936." Are you able to produce a copy? A. That is filed.

Q. Then: "During those years the membership fee was the sum of \$2.00" That he never got back? A. No.

Q. That is a straight contribution that went into the general fund? A. Yes.

Q. Continuing: "In 1936 the contract basis of membership was abandoned, and since the qualification for membership has been the delivery of cream to the association



and the payment of a membership fee of \$1.00." What do you mean by the words "the contract basis of membership was abandoned." You still have what is equivalent to a contract in the articles of association. He must deliver on that basis. Is there a real difference there?

A. The expression may not be quite correct.

Q. Explain the difference. A. It merely means that we don't require the members to sign a contract ~~but~~ to sign that marketing agreement.

THE CHAIRMAN: What was the reason for abandoning the market agreement?

THE WITNESS: In those years, Mr. Chairman, there was a lot of distress among the farmers and produce was low in price.

BY MR. PARKER:

Q. And distress among the directors? A. I said members and other producers, and it was almost impossible to tie any man down to a signature on the dotted line. Almost everyone sold anything he could, whether ideas or commodities, and in those days you were not able to obtain easily anyone's signature. The bidding for cream was strong -- competitive bidding. Such were the efforts of the opposition.

Q. What do you mean by "the opposition"?

A. Those that are not conducting a cooperative business. Consequently no farmer -- feeling as he did that the situation was unstable -- was very anxious to become signed up for any length of time to anybody. We had that clause in and found it was a handicap to us to secure sufficient volume to keep operating.

THE CHAIRMAN: The agency feature of which you spoke was a part of this marketing agreement?



THE WITNESS: Yes.

THE CHAIRMAN: And when you had no agreement --

THE WITNESS: The articles of association and the memorandum of association are still factors.

THE CHAIRMAN: But your seller would not know particularly about your articles of association. On signing up, would he know about them?

THE WITNESS: He had every opportunity to become familiar with them, and we had our field men out explaining matters and we were broadcasting over the radio.

THE CHAIRMAN: What do you regard as the duty of the agent in relation to his principal -- to return the full amount he collects?

THE WITNESS: I would say that the agent's duty is that of taking the best possible care of the interests of the party for whom he stands.

THE CHAIRMAN: Does he make any deductions when he accounts?

THE WITNESS: You refer now to any agent?

THE CHAIRMAN: Yes.

THE WITNESS: Not necessarily any cooperative?

THE CHAIRMAN: No.

THE WITNESS: I would presume that in the ordinary sense of the word the agent would make some deduction for commission for the work he was doing.

BY MR. NADEAU:

Q. You have four thousand members? A. Yes.

Q. Have they paid the membership fee? A. Yes; these four thousand we have referred to have paid.

Q. How is it then that in your statement for the year 1944 it shows on the side of liabilities membership fees of \$1,581? A. That was membership fees collected





that particular year. Ever since the inception of the company, I must admit, I have not followed the whole of the statements up to see that there were collections made right along, and whatever disposal was made of that, I don't know. They don't appear in our statements now but they have been collected because the records show that.

Q. Have you many cooperatives as members? A. No. We could possibly say that any other cooperative association who wishes can become a member, and by reason of the fact that we have received produce from another cooperative they could be a member.

Q. Is the Calgary Milk Producers Association a member? A. Yes. They received their share of our distribution.

Q. They own participation shares? A. Yes.

Q. Do you keep separate accounts for members and non-members? A. We have really no account of non-members because as they enter our ledgers as shippers they are immediately regarded as members. And at the time we distribute the bonus the membership is paid.

Q. So that anyone who comes to your association and sells products automatically becomes a member of the pool? A. Yes.

THE CHAIRMAN: And is bound by your articles of association which he has never seen. I am putting that as a question. He may see them later, but up to that moment he has never seen them?

THE WITNESS: Probably he knows something about them.

THE CHAIRMAN: That is different.

THE WITNESS: It must be remembered, sir, that the producer who comes to the dairy pool is usually a man who has lived in close neighbourhood with some other producer



who has been a member a long time and he is therefore apt to know a lot about the organization.

THE CHAIRMAN: You take it for granted that he knows, ~~where~~ he does or does not.

THE WITNESS: Yes. We take it for granted inasmuch as our articles are registered and are supposed to be publicly known.

THE CHAIRMAN: That is not as good as the marketing agreement you had at one time.

THE WITNESS: That is true.

BY MR. PARKER:

Q. That change was made in the articles at the time you abandoned the contract? Was it not the same as when the contract was being used? A. The articles?

Q. Was article 40 altered at the time you discontinued the contract or is it the same now as it was when the contract was in force? A. We have had the articles amended since that time.

Q. Was it changed to meet that situation? A. Yes.

Q. Can you show me what article 40 was before the change was made? Can you tell me in substance what the change was? A. Yes, I can do that. It would read as it is in our minutes from where it can be taken.

Q. You haven't got your minute book here? A. No.

Q. I want you to understand. I want to know, following up the questions that have been asked, whether, when you gave up the use of the contract, you said in effect: "We can't use the contract any more and we must have the substance of it in some other form." And so you went to your solicitor or somebody else and redrafted article 40 so as to get substantially what was in the contract. Was that done? A. Yes.





Q. Is there a resolution in the minute book dealing with that? A. Yes.

Q. Will you during the lunch hour send a copy of the old article so that I can compare it with the new article 40? A. Yes.

BY MR. ELLIOTT:

Q. In answer to Mr. Parker you said that you obtained substantially the same arrangement with the producers under the new articles as you had with the original contract which you were abandoning? A. Yes.

Q. Would you qualify your statement at all in that regard? Did they get about the same thing? A. As far as benefits go?

Q. Yes. A. Yes, I would say that; and there is this to remember also, that we increased our business very substantially during that time.

Q. Were distributions made in the same way after the contract had been abandoned? A. Yes, exactly the same way.

Q. For several years you made no distribution. That is because you were in difficulties? A. Yes.

Q. The shipper was not bound at all for five years? A. No.

BY MR. VAUGHAN:

Q. In the participation certificate, on the left hand side there is an entry crediting the amount received and a deduction from that for membership fee? A. Yes.

Q. That means that whether a man applied or not, as long as he shipped you cream you would make the deduction and thereby make him a member? A. Yes.

Q. Whether he wants to become one or not?  
A. The shipper does not come to us unless he wants to and



we have never yet had one single word of protest against the deduction of a dollar.

Q. That is how he becomes a member, by the deduction of the dollar? A. Yes.

BY MR. NADEAU:

Q. Is your shipper under any obligation to share in your losses? A. I don't know that I could give an intelligent answer to that question. Legally perhaps -- I would not know -- but morally of course.

THE CHAIRMAN: He does not take that for granted?

THE WITNESS: Possibly. But there was no difficulty at all in using our net earnings in the three years to reduce the deficit.

BY MR. ARNASON:

Q. He assumes responsibility? A. He certainly does.

Q. He assumes responsibility for losses to the extent that any equity he may have in the surplus might be wiped out in certain years? A. Yes; I think that is true.

BY MR. PARKER:

Q. Possibly the answer to the question Mr. Nadeau asks is to be found in section 23 of the Act itself, the Marketing Association Act. I am not saying so; I am suggesting it.

THE CHAIRMAN: That is the limited liability provision?

MR. PARKER: Yes.

MR. ELLIOTT: Perhaps Mr. Nadeau is asking the question in a different light. That refers to the member as member. Is that equally true of the member as seller or shipper? This provision refers to the member's liability with respect to share capital.



MR. PARKER: It provides that no member shall be liable for the debts of the association to an amount exceeding the sum remaining unpaid of his membership fee or his subscription for shares, where there are shares, as the case may be -- in this case there are none -- including any unpaid balance on any promissory note given in payment thereof. That may possibly include these participation certificates. Perhaps it does not.

THE CHAIRMAN: No. The participation certificate is from the association to the member; a promissory note would be from the member to the association.

BY MR. PARKER:

Q. One question about loans. On page four, paragraph nine you speak about loans and you make this statement: "Because of losses incurred during one state of its operations the association has not made the progress it anticipated in this regard" and so on. You had these various loans and you paid a lot of them off? A. The sum of \$24,000.

Q. And then you say: "It is the intention of this association to reduce this loan by paying a further \$7,000 at the close of its fiscal year ending January 31, 1945." A. Yes.

Q. What is the origin or source of the money the company has used to pay off loans? It is its earnings? A. That is the amount of money issued in participation certificates.

Q. They cover the company's earnings? A. Yes, in part; some cash and some participation.

Q. The participation certificates represent the company's earnings? A. Yes.

Q. And the money represented by these certificates has been used to pay off these loans? A. Yes.





Q. From what source did the balance come? A. That was a government loan -- pardon me; what did you say?

Q. I understood that the amounts to pay the loan came from two sources, namely, amounts represented by participation certificates plus something else.

A. No. There is only one way we could reduce the loan.

Q. What happens if one of the holders of participation certificates, assuming he had the right to come and demand his share, found that the money set aside for him was represented by a new building somewhere. How would that work out? A. He should be proud of that, in the first place; and so they are.

Q. Proud, and not demand his money? A. Yes.

Q. He ought to be very happy if he sees it that way. A. Well, as a rule he is.

Q. Will you turn now to the top of page five. Speaking of the member's interest you say: "Their interest in the property and assets of the association is limited to the payment of deferred participation certificates held by them." A. This is in reference to honey producers, section 47 of the articles.

Q. That is honey? A. Yes.

Q. There is a different set-up as between the honey men and the cream men? A. We have not as yet issued participation certificates to bee-keepers. When we do their interest will extend only to the amount of certificates issued to them. Any previous assets of the company long antedating their appearance in the picture they would have no equity in.

Q. How can you find out what part of the physical assets is shared in by the honey producers? A. I don't



think we could figure that way.

Q. I don't know how you can. You say: "From 1929 to 1934 the operations of the association were quite successful and surplus earnings were distributed to the members in accordance with the terms of the marketing contract, partially in cash and partially in participation certificates." That is in accordance with what you have been saying?

A. Yes.

Q. You still maintain that you never made any deduction in the early days; they were all earnings? A. There were no deductions, as far as I know, in the early years, but I was not here.

Q. Further you say: "The cash retained during these years and for which participation certificates were issued amounting to some \$24,000 was used to reduce the bank obligation guaranteed by the government."

A. Yes, that is right.

Q. Let us come now to the bottom of page six. As I understand your statement in the brief, it is in a word, in regard to poultry and eggs, that at the request of the Poultry Marketing Board the association made its plant available for the handling of eggs and poultry?

A. Yes.

Q. It was not intended to be a profitable thing for you? A. No. It was run as a matter of service.

Q. As a matter of service that you were rendering the Poultry Marketing Board gratuitously? A. Yes.

Q. I suggest that needs some modification.  
A. And I was ready to give it.

Q. The amount of rent, or whatever remuneration you got for the marketing facilities thus made available, was profitable to you. The price was arranged on such a basis





that it would be profitable? A. No. It is not a profitable arrangement at all. As a matter of fact, we have readjusted the remuneration we have been given for the service, not for the purpose of giving us more so that we could have a profit, but in order to give us more so that we would not have a loss. We were having losses at times because of the small remuneration or commission paid us.

Q. The association, you say, "charges a commission on the handling of these products, which it is felt is only sufficient to meet the additional expenses encountered from the handling of poultry and egg products." How do you fix all that? Is it worked out on a mathematical basis? A. It is not that bad.

Q. But pretty near that bad? A. No.

Q. Tell us how bad it is. A. We know there are certain amounts of overhead which we have to take care of because of increased business, so that it comes back to the same situation as in the case of honey. I may have a man in one department who does not happen to be busy on a particular morning and I will move him over somewhere else, and that happens several times a week, so that you can't keep track of a man's time precisely. Personally, taking my own time in the business, I don't know how many hours I spend in each of the departments; but with our auditors we make a careful analysis of the general overhead situation.

Q. Is the auditor any better able to judge how many hours you devote to the poultry end than you are yourself?

A. No.

Q. Or how many hours you give to any other activity?

A. No.

Q. I will leave it at this: You make these estimates on the basis of what you believe at any rate gives you a



margin? A. Yes, that is true.

Q. Well, is it not true? A. No. It is what we believe, but we don't know exactly what the result is until we wind up our books.

Q. But how can you tell how to wind up your books if you do not keep records? A. Oh, but we do.

Q. I don't think we are talking about the same thing. I am trying to find out whether your records are kept on such a basis that this portion of the business, namely, making available certain facilities to the Poultry Marketing Board, is profitable, whether you break even or lose money on it, and whether you keep your accounts in such a way as to be able to ascertain the results.

A. I would say that in so far as we are able to do it without entailing undue cost in the accounting, it is done. We don't want to eat up any little surplus there might be.

Q. I will put it this way: You make an estimate of what these services cost? A. Yes, I think so.

Q. And make it on a sufficiently liberal basis that causes you to believe that if the accounts were accurately kept to the last cent it would be profitable?

THE CHAIRMAN: Or that there would be a margin?

MR. PARKER: Well, there would be a margin on commissions in excess of actual cost. Is that a fair way to state it?

THE WITNESS: No.

BY MR. PARKER:

Q. What is wrong with it? A. Exactly the opposite is the case.

Q. Do you estimate on the basis that there will be



a loss? You say that the exact opposite is the case. The exact opposite, therefore, would be that you make an estimate on the assumption that there will be a margin of danger. A. Possibly I don't quite understand you.

Q. Well then, you go ahead and explain.

A. That is what I would like to do. Our estimated cost has shown a small net earning, and I believe sincerely myself that if we had charged to that activity all that should be charged up we would not have any profit, if you like that word, at all.

THE CHAIRMAN: You really hope that you are breaking even, but you do not know whether you are or not?

THE WITNESS: If we are not, we shall probably ask for some more commission.

BY MR. ARNASON:

Q. At the bottom of page six, in the paragraph which Mr. Parker was discussing with you, there appears this sentence: "Some time ago a cooperative organization was set up by the government of the province of Alberta, known as the Poultry Marketing Board for the purpose of cooperative marketing of eggs and poultry." I am not sure that I understand the significance of the words "cooperative organization". Can you explain how that board is set up and whom it serves? A. Of course, I don't exactly work with them very closely, but they are on a contract basis with their members. It is a true cooperative. They sign a contract with the Marketing Board for the delivery of eggs and poultry products.

Q. But are they a cooperative organization such as yours? A. They are only producers; that I am sure of.

BY MR. VAUGHAN:

Q. Their interest is in proportion to the amount of





of the certificate. I would like to know --

A. Pardon me, I will confess that we have not redeemed any of them yet but when they are to be redeemed it will be by the amount stated on the face of them.

Q. That is the amount determined by the directors?

A. Yes. I am quite sure I speak the opinion of the Board when I say that if there was a certain amount to be distributed and there were a number of certificates outstanding it would not be done by reducing the amount of the certificate but by calling in so many series of them. If there were five series of them you might call in series 1 and 2 and pay the face value.

Q. What I want to know is whether the amount of the certificate is actually what is paid or whether it is some other amount.

A. Yes, I think so; certainly. We have not redeemed any, but in the Central Alberta Dairy Pool whenever they were redeemed it was by the exact amount stated on the face of the certificates at all times.

MR. SMITH: Mr. Chairman, I would like to ask the witness some questions later.

THE CHAIRMAN: I think we had better adjourn now until 2.15.

• The Commission took recess until 2.15 p. m.

.....

The Commission resumed at 2. 15 p. m.

MR. PARKER: As you will remember, Mr. Chairman, this morning Mr. Duffy was asked to bring certain documents, one being a copy of the old contract and the other the first issue of series A certificates. Counsel have handed me ten copies of each. I do not think there is any further questioning



required.

THE CHAIRMAN: That closes the case.

MR. PARKER: Yes.

Examination of Christian Toppenberg continued:

BY MR. SMITH:

Q. I intend to deal briefly with just two matters. The first is the question of the membership of your organization. With reference to your articles, I suggest to you that the amendment of July 5 of last year is this, in effect, that anyone who ships anything to you automatically becomes a member? A. Yes.

Q. And the last sentence dealing with such members is this: "That no such person shall cease to be a member unless and until the directors by a majority vote pass a specific resolution to that effect." Do you recognize the wording? A. Yes.

Q. You know that, by statute, if an organization such as yours does more than 20 per cent of its business with non-members it becomes subject to taxation. You are aware of that? A. Yes.

Q. That of course could never happen as long as this article of yours is carried out? A. I presume a member could withdraw if he wanted to.

Q. But this says that no such person shall cease to be a member unless and until the directors by a majority vote pass a specific resolution to that effect. Suppose he did withdraw. If every person from whom you purchase automatically becomes a member of your association, then you never can purchase from non-members can you?

A. No, because we are purchasing only from members.

Q. So that the 20 per cent rule becomes completely nullified as far as you are concerned? A. That may be





so. I must say I have not really thought of it.

Q. Is it not rather obvious? A. I presume it is.

Q. I leave it at that. By the way, when a man ships merchandise to you, have you a form about that size which you mail to him? A. No.

Q. Would you mind looking at it to make sure? I got that from a pool. A. This is an application for membership. We haven't got such a form.

Q. It is an application form for membership and on the top it says, in black ink, "You are now a member of the pool." You have nothing of that kind? A. No.

Q. Just a question or two with respect to your method of doing business. I understood you to say that in certain years you had some losses? A. Yes.

Q. Will you please tell me how it is, unless you were buying and selling in the ordinary way as everyone else does, you could possibly have a loss? A. Possibly by paying too much for the cream. Perhaps the initial payment on the cream was too high; we paid more for that cream than the finished product warranted. Possibly that is one reason why.

Q. The point I am getting at is this. The Chairman discussed with you the question as to what an agent was and you, I gathered, thought you were acting as agent? A. Yes.

Q. Suppose I ship you a thousand pounds of butter fat and you convert it into whatever products you make and you take your expenses of operation and remit me the balance--do you follow me? A. Yes.

Q. Then you cannot lose, can you? A. We could, yes, in the case where the margin, that is what we call



the spread between the price paid for the butter fat and what we get for the finished product, was not sufficient to cover the conversion of that commodity into the finished product.

Q. I like the word spread. In other words, you bought at this price, you sold at that price, and your spread was not big enough and you lost money? A. Yes.

Q. In other words, you were buying and selling products just the same as others? A. I cannot agree to that.

Q. Where is the distinction? A. I claim that any cooperative who pays an initial price will arrive in some manner at what that initial price shall be and we pay a certain price on the receipt of the goods. We have a right to expect, because of the traditions of the trade, as I might say, that more or less the market price for cream has a certain relation to the price of butter in the open market. Generally it has and generally no one loses. Generally we at least break even. But there have been many times when butter has dropped in price quite unexpectedly to everyone concerned, and consequently one was forced to sell the product at a price lower than anticipated. That would constitute a loss, sir, would it not?

Q. A loss to whom? A. To the client on whose behalf we operate.

Q. Did you ever collect from those clients such losses during the subsequent year, the year following that in which the losses were made? A. Not in my time.

Q. You do not know of its ever having been done? A. We had only one year of loss before I came to the company.



THE CHAIRMAN: Would you recognize the claim of one of your customers if he should reclaim the material he had supplied, if he were not satisfied?

THE WITNESS: I don't think so.

THE CHAIRMAN: You would not recognize such a claim?

THE WITNESS: I don't understand; what claim?

THE CHAIRMAN: From one of the producers who had sent you his raw product. Would you recognize a claim from him to get it back before you had dealt with it?

THE WITNESS: It would be practically impossible.

THE CHAIRMAN: Owing to the nature of the commodity?

THE WITNESS: Yes.

THE CHAIRMAN: Assuming he did -- I am testing the question of agency -- would you recognize such a claim?

THE WITNESS: No, we would not.

MR. SMITH: Thank you, Mr. Toppenberg.

BY MR. THORVALDSON:

Q. Have you ever filed income tax returns since you were manager? A. No.

Q. Have any investigations been made by the Income Tax Department at any time as to whether your company was liable to tax or not? A. Yes. I think I can say that one year, perhaps 1940 or 1941, a representative of the local tax office called at our office and studied our articles of association and, by the way, he did declare that we were 100 per cent cooperative in consequence of that.

Q. He declared that? A. Yes. Of course, I agree with him.

Q. Was section 40 of your memorandum of association the same then as it is now? A. No, it was not. You





would have to examine our minutes containing the resolution passed in 1936.

Q. But was section 40, referred to on page two of the brief, different then as compared with the section as it now stands? A. Yes.

Q. Did that inspector, apart from going into your memorandum of association, examine your methods of doing business at that time? A. No, he did not.

Q. In any event, you have never been assessed?  
A. No.

Q. And you claim exemption, do you? You feel that you are exempt? A. Yes.

BY MR. ARNASON:

Q. You stated, I believe, that any producer who ships products to your association is entitled to membership?  
A. Right. I would almost go further and say that we must take out membership.

Q. I was reading section 15 of your articles of association. Is it your practice, before such a shipper is granted the status of membership with voting privileges, to deduct the membership fee of one dollar from the proceeds due to such shipper? A. We always do that, sir, always.

MR. SMITH: The article provides that they may deduct it from the first dividend if they wish.

THE CHAIRMAN: That closes the case?

MR. PARKER: Yes. I will now call on Mr. Eric Richardson.

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ERIC RICHARDSON, . . .

Eric Richardson & Graves,  
Chartered Accountants,  
having been duly sworn  
testified as follows:

BY MR. PARKER:

Q. You are a chartered accountant? A. I am.

Q. Of the firm of Eric Richardson & Graves?

A. Yes.

Q. Carrying on business where? A. In the city of Calgary.

Q. For how many years have you been a chartered accountant? A. Thirty years.

Q. You are appearing today on whose instructions?  
A. On behalf of the following: Union Milk Company Limited, Calgary; Central Creameries Limited, Calgary; Crystal Dairy Limited, Calgary; Lethbridge and Medicine Hat; Model Dairies, Calgary; Carstairs Creamery, Carstairs; High River Creamery, High River; Independent Creameries Limited, Innisfail, Bowden, Lacombe; Purity Dairy, Lethbridge; City Dairy, Lethbridge; Jersey Dairy, Lethbridge; Okotoks Creamery, Okotoks; Rimbey Creamery, Rimbey; and Rocky Mountain House Creamery, Rocky Mountain House.

Q. Those last six -- are those all limited companies?  
A. They are not limited companies, so far as I know. They are not cooperative societies.

Q. The brief you are about to submit. is submitted on their behalf? A. I have letters of authorization from all these concerns, each of them instructing me to prepare a brief on its behalf.

Q. That is what I want to know. I want to have it clear as to whose views it is that we are listening. Are they your independent views, or are they somebody else's?





A. May I put it this way: These persons must be deemed to have accepted responsibility for whatever views I may express to this Commission.

Q. The phraseology and the form of its preparation -- that is yours? A. Yes. It has been discussed with two or three representatives of the concerns mentioned there but not with all of them.

Q. Before you begin to read the brief I might ask you this: Were the questions dealt with in the brief discussed at a meeting of the directors so that you would have a general idea of what their views on the subject were? A. No. May I say I have been connected with the dairy industry in this province for a long time, and I think the reason I was engaged by these various concerns is that they knew I had considerable knowledge of the views which they would wish to express to this commission.

Q. Was there unanimity among the shareholders on this question? Was there unanimity in the minds of all the shareholders or persons interested in these thirteen businesses, on whose behalf you are speaking? A. I don't know. I received a letter of instructions from them asking me to prepare the brief.

Q. But to what extent they discussed it, you do not know? A. No.

Q. Your brief is a mixture of facts and inferences? A. And information I have obtained. In reading it, if the Commission permits me, I will omit those matters which are the subject-matter of information that I have obtained from other sources.

Q. That is all right as long as we understand where-in you are putting forward matters within your personal knowledge, which you are prepared to swear to as being true,



and those things which you give as information you have received and which you have reason to believe are true.

A. Yes.

Q. That is a fair way of putting it? A. Yes.

Q. So as to make for better continuity, I think you had better read the brief right through.

MR. SMITH: With Mr. Parker's consent, would it interfere dreadfully with the programme if we altered the line of procedure somewhat? Mr. Richardson has listened to the evidence of Mr. Duffy and Mr. Toppenberg, and before he proceeds to read his brief I wonder if it would be permissible for him to make a comment on the evidence you have already heard?

THE CHAIRMAN: I rather think it would be more regular to do that by way of eliciting information on examination. That would be more regular.

MR. SMITH: I thought the other way might be more helpful.

THE CHAIRMAN: We might not be able to control every witness. I am quite sure Mr. Richardson would be all right, but we do not wish to establish a precedent in that regard.

THE WITNESS: May I be permitted to make some comments as to the relationship which I conceive to exist between section 4 (p) of the Act and other relevant sections of the Income War Tax Act as a preliminary to reading the brief, referring specifically to the companies to whom Mr. Smith has referred? It would illustrate the viewpoint from which this brief has been prepared.

THE CHAIRMAN: I think so.

THE WITNESS: Without the necessity of reading again section 4 (p), which I have recited in full, it may



save time now if I were to quote it.

THE CHAIRMAN: From the standpoint of the Bar of Alberta, I do not want you to commit any breach of procedure with which I am not familiar. Mr. Smith, I have no doubt, will advise you.

THE WITNESS: I am not speaking as a man having any considerable knowledge of law but as an accountant.

THE CHAIRMAN: Very well. Go on, Mr. Richardson.

THE WITNESS: May I preface my remarks by offering to the Commission a definition of "profits", which has been the subject matter of discussion in many of these examinations. The one I propose to offer to the Commission is one which was adopted by the Terminology Committee of the Dominion Association of Chartered Accountants. The definition is this: "Profits are surplus remaining over from the employment of capital after defraying all the necessary expenses and outlay incurred in its employment and after the capital has been replaced or provision made for its replacement."

MR. PARKER: You have no copies of that?

THE WITNESS: No. I will give you the original.

MR. SMITH: I can have copies prepared and presented tomorrow.

THE WITNESS: I propose to take section 4 (p) of the Act and discuss it. I do not think that, in detail, the matter has been discussed, at least at the hearings that I have attended, in the way in which I propose to address the Commission now.

Section 4 (p) of the Act reads: "The income of farmers', dairymen's livestockmen's, fruit growers', poultrymen's, fishermen's and other like cooperative companies and associations, whether with or without share capital, organized





and operated on a cooperative basis, which organizations

(a) market the products of the members or shareholders of such cooperative organizations under an obligation to pay to them the proceeds from the sales on the basis of quantity and quality, less necessary expenses and reserves....."

The first point I wish to make in connection with that, Mr. Chairman and members of the Commission, is that if a person or corporation wishes to take advantage of the immunities and benefits which are conferred by the taxation statute, he must conform strictly to its terms. The Act says "market the products of the members or shareholders."

The Act, in its application, has been construed to extend further than that to ancillary manufacturing processes -- a construction which in my opinion cannot be placed on this section of it. It has been extended to other products, manufactured, such as ice cream. I am speaking only of the dairy industry and my brief is presented solely from their viewpoint. Besides ice cream I would mention chocolate milk, homogenized cream, and a variety of other products including butter. Whether that is properly ancillary to the marketing of cream is a matter which your Commission will determine.

The next point is that they shall market these products "under an obligation to pay to them the proceeds from the sales on the basis of quantity and quality, less necessary expenses and reserves."

I think a proper construction to be placed on that obligation to pay is that the obligation must be implemented within some reasonable time. In my opinion, it is not a proper interpretation to place on this section to suggest



that that obligation to pay can be deferred over a period of many years, as it has been in cases which have been already submitted to the Commission.

I pass now to the necessary expenses and reserves. May I refer the Commission to section 6 of the Income War Tax Act. This reads: "In computing the amount of profits or gains to be assessed, deduction shall not be allowed in respect of expenses, disbursements or expenses not wholly, exclusively and necessarily laid out or expended for the purpose of earning the income."

It is my submission, Mr. Chairman, that the necessary expenses of this particular section should carry the same qualifications as those which appear in section 6 of the other Act, and I suggest that the wording should be: ".... under an obligation to pay to them the proceeds from sales on the basis of quantity and quality less expenses wholly, necessarily and exclusively laid out or expended for the purpose of earning the income." That would make that section consistent with the rest of the Act.

The word "necessary" may be, and I think has, in practice been applied much more widely than is permitted by the definition of "necessary expenses" outlined in section 6 (a) of the Act.

One other reference I wish to make to this particular section.

THE CHAIRMAN: I would expect these remarks, Mr. Richardson, to come from Mr. Smith. This is not a legal tribunal but a Commission and therefore we are giving you every latitude. But legal points should be left to Counsel, and what you are arguing now is law. I do not know how my colleagues feel about it.

MR. SMITH: The point is this, Mr. Chairman. We who are





lawyers are proud of the fact that we know all the law, but practical experience shows that chartered accountants, in this particular branch, have advanced farther and more speedily than the rest of us.

THE CHAIRMAN: I am perfectly willing to go on if you are. My colleagues are too.

MR. SMITH: I have been enjoying it myself.

THE CHAIRMAN: Go ahead, Mr. Richardson.

THE WITNESS: I have only one more comment to make on this section of the Act. I should have prefaced my remarks by saying that this section is characterized by looseness of expression which is not typical of the Income Tax Act as a whole; and some of the criticism which has been directed to the administration of the Act is due to that looseness in wording.

The last point to which I wish to direct the attention of the Commission is "necessary expenses and reserves". I assume the word necessary also qualifies that term "reserves" in this section of the Act. There are, Mr. Chairman, in the provisions of the Act only two sections which relate to reserves. Perhaps I may be permitted to read them -- and I should again say that I am not speaking as a lawyer but purely as an accountant.

THE CHAIRMAN: You are speaking as a lawyer at the moment.

THE WITNESS: I thank you for the permission to do so.

MR. PARKER: Perhaps as a lawyer ought to speak, Mr. Chairman.

THE WITNESS: I would refer the Commission to section 6 (d), which reads:

"In computing the amount of the profits or gains to be assessed, a deduction shall not be allowed in respect



of -- (d) amounts transferred or credited to a reserve, contingent account or sinking fund, except such an amount for bad debts as the Minister may allow and except as otherwise provided in this Act."

There is one other section in the Excess Profits Tax Act, which is also section 6:

"A corporation or joint stock company taxable under the second part of the second schedule to this Act shall be entitled in respect of any taxation period to deduct such reasonable provisions as a reserve against future depreciation in inventory values as the Minister in his discretion may allow."

There is some more about that. These are the only two references which are made in the Act to reserves. In actual administration, the Department have allowed or have termed as reserves provisions which are made for bad debts, depreciation and depletion and this special allowance which is now inserted in the Excess Profits Tax Act.

I am suggesting that if your Commission should decide not to agree to the recommendation which we have made for the complete deletion of section 4 (p) from the Act, but to adopt some modified form of that section, or recommend the adoption of some modified form, that reserve as mentioned there should be limited to the reserves which are allowed to the limited liability companies in the assessment of their annual tax.

As I mentioned before, the word necessary in connection with expenses is capable of too wide an interpretation to give equitable treatment as between non-cooperative bodies, who are taxed under the provisions of the Act, and cooperative societies, who are enabled to claim the benefit of necessary expenses under such a general term as is





recited in clause 4 (p) of the Act.

With your permission I will now read the brief:

"Brief submitted on behalf of a number of independent dairies operating in Southern Alberta to the Royal Commission on Cooperatives."

"1. The present war effort of Canada, the rehabilitation of the armed forces, the provision of schemes for public health and social welfare which are now contemplated necessarily will impose a burden of taxation on the Canadian people far in excess of that required in pre-war years. This burden ought to be borne by each member of society relatively to his ability to meet his share of the national obligations which have been assumed. If corporate bodies are to be taxed as separate units from their members, it is submitted that all corporate bodies should be fairly taxed on the same basis and by the same rules, without distinction.

"2. The Income War Tax Act provides (Section 4) that 'the following incomes shall not be liable to taxation hereunder'.

'p. Cooperative companies and associations . -- The income of farmers', dairymen's, livestockmen's, fruit growers', poultrymen's, fishermen's and other like cooperative companies and associations, whether with or without share capital, organized and operated on a cooperative basis, which organizations

'(a) market the products of the members or shareholders of such cooperative organizations under an obligation to pay to them the proceeds from the sales on the basis of quantity and quality, less necessary expenses and reserves;

'(b) purchase supplies and equipment for the use of such members under an obligation to turn





such supplies and equipment over to them at cost, plus necessary expenses and reserves.

'Such companies and associations may market the produce of, or purchase supplies and equipment for non-members of the company or association provided the value thereof does not exceed twenty per centum of the value of produce, supplies or equipment marketed or purchased for the members or shareholders.

'This exemption shall extend to companies and associations owned or controlled by such cooperative companies and associations and organized for the purpose of financing their operations.'

"The Excess Profits Tax Act provides that taxpayers exempt under the above provisions of the Income War Tax Act shall not be subject to the provisions of the Excess Profits Tax Act.

"It should be noted that the income of a business conducted by a private individual, the financial results of which are merged with his private income for purposes of the Income War Tax Act is separately treated under the Excess Profits Tax Act and subject to a tax at the rate of 15 per centum under the provisions of the first part of the second schedule of this latter Act and to a tax at the rate of 100 per centum under the provisions of the second part of the second schedule.

"Cooperative bodies as defined in the Act are, therefore, more favourably placed than even a private individual under the provisions of the Excess Profits Tax Act.

"2a. Cooperative organizations as discussed in this brief may be classified as follows:

"1. Those organizations which distribute in their original form the products of the members or shareholders



under an obligation to pay to them the proceeds from the sale on the basis of quantity and quality less necessary expenses and have no capital other than that contributed by their present members.

"2b. So-called cooperatives, membership in which can be obtained for a purely nominal fee, but whose operations require large capital expenditure for plant, delivery equipment and storage in excess of the amount provided through the issuance of share capital. It is obvious that as time elapses a constantly increasing portion of the capital facilities employed by such organizations has been obtained from fees, deductions or other contributions from persons who are no longer members, owing to death or discontinuance of their former activities. Eventually a situation will be reached in which substantially the whole of the capital requirements have been provided by persons whose estates have much less interest in the cooperative than have the shareholders in a non-cooperative business. As will be shown from the case cited in this brief such capital contributions of former members may be evidenced by the issuance of so-called participation certificates although there is no possibility of such certificates being paid if the present members of the cooperative are to receive current market prices for their product.

"Other methods under which capital facilities have been provided by deductions from the price paid for the product of former members will no doubt be obvious to the Commission from an examination of the accounts of cooperatives of this nature and to which we have no access. It is, therefore, submitted that the earnings resulting from the employment of substantial capital contributions of





persons whose estates and successors may have no voice in the present management of such cooperatives are even less entitled to exemption from taxation than are the earnings of a non-cooperative organization.

"The persons supplying produce to such organizations will eventually bear as little relationship to the persons who have supplied the greater portion of their capital facilities as have shareholders of a corporation to the persons from whom their purchases are made and should be entitled to no more considerate treatment.

"2c. It has been found very simple to render nugatory the protection which Parliament intended to extend to non-cooperative business by providing that -

'Such companies and associations may market the produce of, or purchase supplies and equipment for non-members of the company or association provided the value thereof does not exceed twenty per centum of the value of produce, supplies or equipment marketed or purchased for the members or shareholders.

'This exemption shall extend to companies and associations owned or controlled by such co-operative companies and associations and organized for the purpose of financing their operations.'

"No better illustration of the manner in which this provision is nullified can perhaps be cited than the following excerpt from the Articles of the Southern Alberta Dairy Pool as revised by extraordinary resolution on June 22nd, 1944 and registered on July 5th, 1944:"

This information, with the balance sheet furnished as an appendix to the report, was obtained by my representative from the Registrar of Joint Stock Companies in Edmonton.  
Continuing:



'Any person engaged in the production of dairy or poultry products for marketing in the province of Alberta will be entitled to membership in the Association upon paying a membership fee of One Dollar (\$1.00), and shall thereupon have the right to vote for a delegate or delegates in his division and shall have property rights in the Association to the extent that he is proportionately entitled in accordance with the Memorandum of Association.

'Provided, however, that any such person who delivers dairy products for marketing to the Association shall be deemed to have made application for membership therein and the Association may deduct the membership fee herein provided from the first payment to be made to him therefor or from the first dividend payable to him, and shall thereupon mail to him a membership certificate, and on and after thirty (30) days from the mailing of such certificate the said person shall be deemed to be a member of the said Association unless he has sooner discontinued marketing his said produce through the Association.

'No person shall be or remain a member of this Association unless he is and remains qualified as provided herein, nor unless he shall market and deliver dairy products produced or acquired by or for him through the Association, but no such person shall cease to be a member unless and until the directors by a majority vote pass a specific resolution to that effect.'

"It is apparent of course that such a provision in the constitution makes it impossible for any person who ships produce to such an organization to avoid becoming a member, even though no contribution is presently required from him and he has entered into no contract of any kind with the concern to which his produce has been shipped.





"3. The exemption from taxation provided by the foregoing paragraphs confers on the cooperative bodies as defined in the Act marked competitive advantages. These societies are not subject to the regulations issued pursuant to the Act. They have untrammelled powers in so far as taxation is concerned as to expenditures for advertising, repairs and maintenance of plant, and any other expenditures which may aid in the development of their business.

"4. Capital investment of the individual and of other corporate bodies can only be made from accumulation of funds diminished by the toll of present taxation statutes.

"The question of capital investments made by cooperative societies was considered in 1920 by a British Royal Commission on Income Tax. We quote the following from the report of that Commission:

'554. We will now consider the income derived by a cooperative society from the investment of its reserve funds. We have already said that there appears to be no sound reason for differentiating between reserves invested in stocks and shares and reserves invested in property, and we recommend that the income from invested reserves should, irrespective of the particular mode of investment, be subject to tax.

'555. We recommend in effect that a society should be treated exactly as a limited liability company trading in similar circumstances and under similar conditions, and if our proposals are acted upon it will be necessary to amend the existing law in so far as it confers special exemption on cooperative





societies.

'556. In making these recommendations we are of opinion that we are not in any way enlarging the scope of the present income tax. We have not sought to widen or to narrow the conception of the trading profit for we think that from the transactions of a cooperative society with its members a true trading profit can and does emerge.'

"As we have pointed out earlier in this brief the reserves set aside by cooperative societies may appear under various captions in their published accounts. In the case of the Southern Alberta Dairy Pool they are principally represented by so-called participation certificates issued during the years 1929 to 1934."

That statement was made pursuant to the balance sheet which I have received. Listening to the evidence this morning, I understand that participation certificates are now only outstanding as from 1934; but this was the latest balance sheet available to me in the Registrar's office. Continuing:

"Value of the fixed assets shown by the Balance Sheet of 31st January, 1944, is as follows:

Land	9,988.00		
Buildings, Machinery			
Trucks, etc.	97,115.49		
Less reserve for depreciation	<u>39,227.84</u>	<u>57,887.65</u>	<u>\$67,875.65</u>

The total amount shown by this Balance Sheet as representing the members equity is \$32,648.15 made up as follows:

Participation certificates -	
Issued 1929 to 1934	24,472.85
Issued 1943	5,869.19
Membership fees	1,581.00
Due to members re undistributed small balances	<u>725.11</u>
	<u><u>\$32,648.15</u></u>



"As no other account representing capital contributions is shown by this statement it is evident that the participation certificates for the years 1929 to 1934 can only be paid by increasing present current liabilities unless true capital contributions are made.

"5. A necessary sequence of the exemption from taxation is the accumulation of large surplus funds and reserves which are being used in some cases to purchase competing plants.

"These surplus funds have in the case of the Northern Alberta Dairy Pool been used to acquire plants from non-cooperative organizations to such an extent as to give this pool a virtual monopoly over very large districts in the northern part of the province. Due to the restrictions imposed by provincial regulations as to the issuance of new creamery licenses such a monopoly is, so long as these regulations exist, safe from any competition.

"Due to the high level of economic activity which has existed during the past few years this and other co-operatives have been able to build up large surpluses for expansion. Non-cooperative business with a minimum tax on corporations of 40 per cent, and an excess profits tax of 100 per cent less the refundable portion, have only been able to retain 70 per cent of the standard profit established by the record of their earnings in the four years preceding the war, or 70 per cent of the amount established by the Board of Referees as the standard profit for that particular business. Non-cooperative business is, therefore, severely handicapped in its efforts to set aside the necessary reserves for post-war industrial expansion. The trend so long as taxation exists in its present form will be towards a constant increase in the number of associations





and volume of business transacted by cooperative concerns. The attached schedule of statistics of cooperation attached to this brief shows that the number of associations has grown from 686 in 1933 to 1,722 in 1942 -- the last year for which information is available. It will be noted that the number of associations has grown its greatest growth during the present war --

1940	1,151
1941	1,395
1942	1,722

"6. The difficulty of formulating regulations for taxing the income or profits of cooperative societies when these are treated differently from other corporate bodies is shown by the experience of Britain and other countries and in Canada has led to the appointment of the present Commission.

"Speaking in the House of Commons on 1st December, 1925, Winston Churchill stated:

'There is, however, no general exemption from income tax enjoyed by cooperative societies. If reference is made to the Report of the Royal Commission on income tax, it will be seen that the tax paid by the societies and their members under the legal provisions which governs their cases does not greatly differ....from that which would be payable under the ordinary income tax law.'

"By the provisions of the Finance Act of 1933 Registered Societies -- wholesale, retail and producer and mutual concerns became taxable to the same extent as limited liability companies trading in similar circumstances.

"From the latest information available to us we find that the following countries taxed cooperative income in



1934 or earlier.

France - Cooperatives subject to the industrial and commercial profits tax the same as private enterprise.

Norway - Cooperatives became subject in 1933 to 'an income tax not only on the income yielded by the property, but on the entire income, also that part of the surplus which is paid the members as bonus, discount on purchases or the like.'

Switzerland - At the end of the last war, the federal government 'War Tax' taxed one half of the dividends to members and in 1934, the crisis tax did the same. Various Cantons tax cooperatives with respect to dividends, in addition to tax on their capital assets and annual reserves:

1. - No tax on patronage dividends in four Cantons.
2. - Partial exemption of patronage dividends in eight Cantons.
3. - Tax levied on whole patronage dividend in twelve Cantons.

Holland - In 1917 a special law dealing with the taxation of dividends was passed which has the character of an Act for the taxation of profits. The view of the revenue officials of that country appears to be that:

1. - The members of the society, by getting their dividend make a profit on the sales to non-members who get no dividend.



2. - The dividend is paid on the total amount of purchases and does not correspond with the surplus on each class of articles.

3. - The amount of the dividend depends on the years surplus or loss.

"Earlier in this brief we have spoken of the ease with which the provisions of Section 4 p. of the Income War Tax Act with reference to sales to non-members can be rendered nugatory.

"If reference is made to the financial statement of the Southern Alberta Dairy Pool for the fiscal year ended 31st January, 1944, appended to this brief it will be noted that the provisions of the section which require the tax exempt to:

"(a) market the products of the members or shareholders of such cooperative organizations under an obligation to pay to them the proceeds from the sales on the basis of quantity and quality, less necessary expenses and reserves.

have not been complied with by this organization.

"Miscellaneous profits resulting from transactions in eggs and poultry, honey and cans

amounted to	4,660.18	in the case of the Calgary Branch
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and a loss of	<u>303.22</u>	in the case of the Acme Branch
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A net result of	\$4,356.96	from these miscellaneous operations
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The net trading profit for the year as shown by the statements amounted to	10,297.83
Miscellaneous profits as above	4,356.96
Net income from Mayfair property	<u>428.14</u>
Total net income for the year	15,082.93





Carried forward.....	15,082.93
<u>Less</u> estimated provision for final payment on 1943 butter fat purchases	<u>14,410.00</u>
Net profit for the year	<u>\$ 672.93</u>

"We direct the particular attention of the Commission to the fact that a portion, approximately one-third of the final distribution in connection with 1943 butterfat purchases resulted from transactions not connected in any way with the production of butterfat on the farm and is as truly a 'dividend' as any dividend paid by a non-cooperative organization.

"7. The operating profits of any business which result from trading with the general public arise from the same causes and are of the same character. They are not affected by the form of organization whether individual or corporate. In equity, therefore, all such profits should be subject to the same taxing statutes.

"In the principal cities of the province of Alberta the distribution of fluid milk products has, for a number of years been under the supervision and control of the Board of Public Utility Commissioners. This Board has power to define the area from which the milk supply may be drawn, to license the producers who may ship milk and cream, to regulate the standards to which the product must conform, to set the price to be paid to the producer and to fix prices to be paid by the consumer.

"It is generally admitted that the operating margins between the prices paid to the producer and the prices at which the various products may be sold to the consumer in Calgary are at least as small as in the case of any city of comparable size on the North American Continent.



"The Board of Public Utility Commissioners has on many occasions held public enquiries at which they have taken evidence both as to costs of production and of distribution. In fixing the prices to be paid to the producer the Board must necessarily have taken all factors into consideration and particularly the necessity of giving a fair price to the farmer so as to ensure a satisfactory civic milk supply under all conditions and at all seasons. The system of licensing milk shippers and restrictions on the number of licenses resulted for some time in very substantial prices being paid for milk quotas, that is the right to ship a certain stated quantity of milk to one of the distributors."

MR. SMITH: Will you explain that.

THE WITNESS: The Board has fixed from time to time the amount of milk which a distributor may produce and may be allowed to ship to one of the dairies. Any quantity in excess of this which may be shipped is what has been termed surplus milk. Surplus milk carried a much lower price than that which was delivered in respect to the quota which has been described. If a man wished to extend his business and obtain a larger portion of milk at a high price he could go to another person who held a quota and buy it from him, sometimes at rather fantastically high figures. I haven't any in mind now, but astoundingly high figures have been paid.

THE CHAIRMAN: Each quota is subject to geographical competition.

THE WITNESS: They can find shippers to an area. First of all, when the district was established, it was confined to persons shipping in that particular area. The reason for that was that in the past some difficulty





had been experienced in obtaining a satisfactory supply from outside areas under certain weather conditions such as bad storms, and the Board deemed it advisable to try to encourage, within a reasonable radius of each of these controlled areas, a satisfactory production of milk.

Continuing:

"Under these circumstances fair prices to the producer having been assured, it is submitted that any profits which may have accrued to the milk distributors whether cooperative or non-cooperative are the result of the employment of capital and of labour and are in every sense true profits and as such should bear their relative share of the national tax burden.

"We have been unable to obtain particulars as to the constitution by-laws and financial statements of the Co-operative Milk Company distributing milk, cream and other allied products in the City of Calgary. We are, therefore, unable to offer comment on their operations as reflected by their annual accounts. Neither have we been able to obtain similar data in connection with the Central Alberta Dairy Pool.

"Our comments in connection with the Co-operative Milk Company, Calgary, are therefore of a general character.

"The test of a true cooperative qualified for exemption under section 4 p. of the Income War Tax Act is:

'It must be a cooperative of primary producers, which markets the products of the members or shareholders.'

"All producers of manufactured goods or articles are, therefore, excluded from the benefits conferred



on primary producers by this Statute.

"The Co-operative Milk Company manufacturers and distributes the following manufactured products in the City of Calgary:

1. Homogenized cream. This is cream the fat globules of which have been broken by the process of homogenization.
2. Chocolate milk
3. Manufactured buttermilk
4. Ice cream

"We are of the opinion that the production of these manufactured products cannot be said to be ancillary to the marketing of the product of the members or shareholders. The manufacture and distribution of these products should, therefore, automatically place this Company on exactly the same basis in so far as taxation is concerned. as that of the other companies distributing milk in the Calgary district. Otherwise it would appear that there is nothing to prevent a tax exempt cooperative milk company from manufacturing casein from milk, using the casein for the production of paints, glues and all the varied substances of which casein may form the base.

"In equity, therefore, we submit that the present Statute should be administered strictly in accordance with its terms and that the words 'market the products of the members' cannot be extended to cover products which are the result of manufacturing processes.

"We have no information however as to whether the Co-operative Milk Company has been assessed under the Income War Tax Act on the whole or on any portion of its earnings."

I would like to withdraw the next paragraph and



also the appendix to which it relates. I have since learned that the list is not strictly accurate. It is in connection with the plants required by the Northern Alberta Dairy Pool. The affairs of that association will be discussed in Edmonton and there is no purpose in discussing it here, so that I have not endeavoured to obtain the correct list. The list is on page twenty-two. In other words, I wish to withdraw page twenty-two and the last but one paragraph on page seventeen. Continuing:

"Perhaps no better illustration can be cited showing the extent to which the Central Alberta Dairy Pool is prepared to go for the purpose of eliminating non-cooperative competition than the following letter:

Olds, Alberta,  
January 11, 1945.

'Mr. Eric Richardson, C. A.,  
c/o Messrs. Eric Richardson & Graves,  
903-904 Lancaster Building,  
Calgary, Alberta.

'Dear Sir,

'With reference to your inquiry regarding the terms, etc. under which I sold the creamery business formerly operated by me in the town of Olds, I beg to give you the following information:

'This business was purchased by me in the year 1935 from the Central Creameries Limited at a cost of \$6,800, giving to that company the offer to re-purchase this business at any time by paying the same amount as that which might be offered by any other company or association. The business was sold in August, 1944, to the Central Alberta Dairy Pool. During the intervening period I expended the sum of approximately \$9,000 on additiona and improvements to the premises and in the





purchase of a milk route, the cost of the latter being \$1,000."

I do not know whether that \$1,000 is included in the \$9,000 or is in addition to it. I have not checked that. Continuing:

"The annual production of butter at the time I purchased this business was 175,000 pounds and in July, 1944, the annual production was at the rate of approximately 375,000 pounds.

"On July 2, 1944, a very severe loss by fire occurred to the machinery and premises; the amount recovered from the insurance company being \$12,500. In August, 1944, no repairs to the building having been started nor new equipment installed, I sold my business, goodwill, and plant in its damaged condition to the Central Alberta Dairy Pool for \$37,500 and in addition retaining for my own account the \$12,500 I collected from the insurance company. In accordance with the terms of the option given at the time this business was purchased the Central Creameries Limited were given the opportunity to re-purchase the business on the same terms as those offered by the Central Alberta Dairy Pool, but this company expressed the opinion that any such price was altogether too excessive.

Yours very truly,

(Signed) A. A. Dunkley

"You are at liberty to use this information in any way you may wish.

(Signed) A. A. Dunkley."

"Under the restriction which prevails as to the granting of creamery licenses in this province, it is obvious that producers of cream in the Olds district are now under the practical necessity of shipping their produce to the



cooperative organization even although they formerly shipped to a business operated under individual ownership.

"8. It is, therefore, recommended:

"1. That no distinction shall be made between the taxation of cooperative societies and other corporate bodies and that regulations issued pursuant to the Income War Tax Act and the Excess Profits Tax Act shall be uniformly applied to each form of organization.

"2. That paragraphs 4 i. and 4 p. of the present Income War Tax Act be rescinded.

"3. That patronage dividends if disallowed as an expense of non-cooperative organizations be also disallowed as an expense of cooperative societies.

"4. That if patronage dividends are to be allowed as an expense in determining taxable income, the payment of such patronage dividends whether evidenced by the issue of participation certificates or in any other manner, must be paid in cash within six months of the close of each fiscal period in respect of which such dividends have been issued."

The purpose of putting in six months was that that is the time permitted by the Income War Tax Act for corporations to file income tax returns, and it is therefore considered a reasonable time in which the income of a corporate body may be determined. Continuing:

"5. That if the provisions of Section 4 p. are not rescinded in their entirety, that the use of the word reserves in 'necessary expenses and reserves' be defined as including only such reserves for bad debts, depreciation, etc., as are otherwise permitted by this Act in the assessment of other limited liability companies.





"6. That if the provisions of Section 4 p. of the Income War Tax Act are not rescinded in their entirety that provision be made providing that the portion of the earnings of a cooperative society which may fairly be ascribed to the employment of labour by the society and to the use of its capital resources receive no more favourable treatment than profits resulting from these factors in the case of other limited liability companies.

"In conclusion it is submitted that corporations and cooperatives each have a place in modern society. They are methods under which the resources of many are combined to make possible the development of the resources of this great country. Each form of organization enjoys the benefits and advantages provided by the State for all its members whether corporate or individual cooperative societies and limited liability companies are in the view of the law legal entities, whose members have no personal liability for the debts of the organization of which they are members or shareholders. Having as corporate bodies separate status under the law each should bear an equal share...."

I wish to change the words "an equal" in this line and to say instead "its fair share." Continuing:

".....of the burden of taxation rendered necessary by a war fought to preserve the principles of justice, equity and freedom upon which this nation has been founded. The late Josiah Stamp in his Principles of Taxation stated 'If the State wishes for national reasons to benefit or assist certain trades, I think, in general the worst method is by discrimination or differentiation in taxation.' The corporations and individuals on behalf of whom this brief is presented recognize their obligation to meet their proper share of the onerous taxation rendered necessary by this war.



They do not believe, however, in any concept of taxation under which the present emergency is being applied to benefit their competitors at the national expense."

Documents filed with brief:

- (a) Exhibit 1 - Statement of Operations for the year ended 31st January, 1944, Southern Alberta Dairy Pool
- (b) Exhibit 2 - Statement of Manufacturing Costs for the year ended 31st January, 1944, Southern Alberta Dairy Pool.
- (c) Exhibit 3 - Statement of Miscellaneous Operations for the year ended 31st January, 1944, Southern Alberta Dairy Pool.
- (d) Exhibit 4 - Selling and Administration Expenses for the year ended 31st January, 1944, Southern Alberta Dairy Pool.
- (e) Schedule - Covering Manufacturing Expenses for the year ended 31st January, 1944, Southern Alberta Dairy Pool.
- (f) Balance Sheet - Southern Alberta Dairy Pool - As at 31st January, 1944.
- (g) Schedule - Covering Statistics of Co-operation from 1933 to 1942.

.....

BY MR. PARKER:

Q. The last sentence but one in the brief, Mr. Richardson, is argument in a sense, but an inference may be drawn from it. You say that the corporations and individuals on behalf of whom this brief is presented recognize their obligation to meet their proper share of the onerous taxation rendered necessary by this war. Do you seriously suggest that they recognize that obligation any more freely than do those persons engaged in the cooperative societies? A. I am afraid I don't exactly get the question.

Q. I will put it again. Don't answer if you do not understand. You say: "The corporations and individuals



on behalf of whom this brief is presented" -- that is, the independent companies, the non-cooperatives? A. Yes.

Q. "...recognize their obligation to meet their proper share of the onerous taxation rendered necessary by this war." A. I think that is correct.

Q. Do you think it would not be equally correct if you made that statement in regard to the cooperatives?

A. No. I don't agree with that at all.

Q. You don't think they recognize their responsibility? A. Not as far as I gather. They do everything they can to avoid taxation.

Q. In what way do you consider they do? Do you consider they evade their obligations? A. Yes.

Q. Tell me. I use the word evade and not avoid.  
A. But I used the word avoid. I would not say evade; they avoid.

Q. Do you not agree that the limited companies do everything in the law to avoid taxation? A. The Privy Council has said so.

Q. The highest court has said so? A. A man may so order his affairs that he can draw on himself the least incidence of taxation.

Q. We both understand that. But speaking as a chartered accountant, has it not been your experience that they do that very thing -- that they do everything they can to avoid taxation. A. Every corporation and every individual has a right to do that.

Q. Cooperatives included? A. Yes, if they find that they have a right to do so they can do it.

Q. But you think that under a proper interpretation of the law they are escaping some obligation? A. They are receiving --





Q. Just wait. You think they are escaping some obligation which a proper interpretation of the law would impose upon them. Is that your position? A. They are receiving benefits which in my opinion the statute does not confer upon them at the present time.

Q. Do you consider that an answer to my question?  
A. Do I consider what?

Q. Do you consider it an answer to my question?  
A. Yes.

Q. Do I understand that your suggested remedy here is to repeal section 4 (p)? A. Yes. If 4 (p) is rescinded there is of course no necessity for the application of those other matters which I have recommended.

Q. Therefore, taking this company to which you have devoted considerable attention in your brief, the Southern Alberta as you understand the workings of that company, if 4 (p) were washed out they would be taxable? A. In respect of the later years, yes. It would also depend on the interpretation which might be placed by the department on the patronage dividends which they are paying.

Q. That is what I thought. One or two more questions. At the beginning of page 3 of the brief you lay down a sort of primary thesis on which, it seems to me, a good deal of your argument depends. The strength of your argument may depend upon the accuracy of that original assumption, that this burden of taxation ought to be borne by each member of society relatively to his ability to meet his share of the national obligations which have been assumed. I don't quite understand just how that would work out. What do you mean by that? A. Taxation ought to



be borne by each individual according to his ability.  
Don't misunderstand me.

Q. According to ability to pay? A. According to his ability to pay; that is what I mean. I don't mean that ability to pay necessarily depends on the individual's income.

Q. Let us take these points one at a time. You subscribe to the theory that taxation should be distributed according to ability to pay? A. Yes.

Q. The word "individual" is not in there; "by each member of society". A. Yes.

Q. Do you in that definition include a limited company as a member of society? In that sense I know it is not human. A. I include it as corporate.

Q. As one of the persons who ought to stand their share? A. Yes.

Q. You likewise include a cooperative association as a similar person? A. Yes.

Q. And do you regard those two persons in all respects as the same in so far as taxation is concerned? A. Yes.

Q. No distinction whatever? A. No distinction.

Q. You do not subscribe to the theory that there are considerable differences, both in their purpose in coming together, the objects for which they come together, and the services they render, the business they carry on? Is none of these things, you say, is there any distinction between the two? A. No, I don't say that. I say that from the taxation standpoint they should be regarded as on the same basis.

Q. I can hardly follow that unless you go further and say they are the same. A. They are corporate





bodies and should bear the same share of taxation.

Q. But do they do business on the same basis? That is my point? A. The manner of doing business is identical, I think. The only difference is in regard to the distribution they make of earnings.

Q. Well, isn't that a part of the way they do business? A. That is the distinction.

Q. You say first that there is no difference, and I understand you to say now that there is no difference except with regard to that. A. With that qualification.

Q. That is your considered view? A. Yes.

Q. You realize of course that it is quite different from the view held by a large number of people? A. Yes; I understand that.

THE CHAIRMAN: Is ability to pay the only test you apply to taxation, Mr. Richardson?

THE WITNESS: I think so. I don't subscribe to the benefit theory but I would not be prepared to argue that with Professor Elliott or with Mr. Nadeau. However, it is my idea.

BY MR. PARKER:

Q. But your brief is built on the general assumption that your opinion is correct. A. Yes.

BY MR. ELLIOTT:

Q. Mr. Richardson, will you explain your statement that there is only the one difference which you have mentioned between various sorts of concerns, so far as tax purposes are involved. I have this in mind. It is true, is it not, that an ordinary limited company sells shares which give to the owners certain rights in the distribution of the profits of the company? A. Yes sir.



Q. Some companies at the outset are able to raise very considerable sums of money by the sale of those shares if their prospects look bright? A. Yes.

Q. Why do people buy those shares? A. Because they expect to receive an income from the investment they make in such shares.

Q. Do you think that is one of the advantages conferred on a corporation by being incorporated? A. There are other factors too.

Q. Is that one? A. It is one of them, yes.

Q. Do you think it would be able to sell its shares as readily if it said to prospective shareholders, "We are not going to pay you anything"? A. I doubt whether they would be able to sell them at all.

Q. Is it an advantage, does it increase a person's ability to pay, if he has at his command a considerable fund of resources for investment? A. Undoubtedly.

Q. So that a limited liability concern which has sold shares promising a return to members could possibly obtain large amounts of resources initially, and that would increase its ability to pay taxes? A. No. I think that is wrong, Mr. Elliott.

Q. Tell me where. A. The ability to pay is not coincident with its liability to pay taxes. A company may have enormous resources but have no liability for the purpose of paying taxes because it may have no income.

Q. I agree with you. It is more likely to be able to get income under promising circumstances, however, if it can secure control of resources? A. That is true.

Q. And if it cannot secure control of resources it is not likely to have any great ability to pay, at the



beginning at any rate? A. I have seen corporations of both types, some of which started with very limited resources and showed substantial earnings from the beginning. I have seen corporations that started with a large capital unable to pay dividend requirements on preference shares from the beginning.

Q. In the case of these small companies they just could not? A. In some cases they had nothing except the ability of the proprietors and their experience in their particular line of business.

Q. And in that case, ability to sell shares was not of great advantage to them? A. It would not be generally known to the public.

Q. In the case of other companies, large amounts have been raised initially? A. Yes.

Q. Another question. Would you consider that that is the difference between some cooperatives and some ordinary companies -- ability to attract capital initially? A. Oh, I think so, yes. I would agree with that.

Q. I don't want to take too much of the time of the Commission but there are a number of points on which I would like you to give me your opinion. I am not an accountant; there are three of us on the Commission who are not accountants. Another question. You have among your clients both incorporated and unincorporated concerns? A. Yes.

Q. In the unincorporated business, income accruing during the year is subject to personal income tax in the hands of the tax payer during that year? A. Yes.

Q. And in the case of a corporation the earnings of the corporation are not necessarily subject to income





tax. A. No, unless a dividend is declared.

Q. So that the Board of Directors of the corporation have some discretion in determining when these profits shall be subject to personal income tax in the hands of individual shareholders? A. Not entire discretion under the Income Tax Act.

Q. There is, I know, a clause under which the Commissioner may require the corporation to distribute and if it does not so distribute it shall be deemed to have distributed. To your knowledge, in the cases you have dealt with, has that clause ever been acted on? A. Only on one occasion.

Q. Would you care to give me your opinion as to whether it is a clause which it is easy to administer and enforce? A. No, I would not think it is, and I think that is the reason it has not been more generally applied.

Q. So that within fairly wide limits the Board of Directors has some discretion as to when the stockholder shall receive? A. Undoubtedly.

Q. That differs from the ordinary partnership?  
A. Yes.

Q. Or business under sole proprietorship? A. Yes.

Q. In the case of an unincorporated business, if the owner wishes to turn back for reinvestment in the business some of the earnings of a particular year, he first has to pay the personal income tax and any excess profits taxes before reinvesting? A. Yes.

Q. In the case of a corporation the funds reinvested are not subject to personal income tax? A. No, but they have already been subjected to the other taxes you have mentioned.



Q. I do not know whether this is a fair question. but in your opinion, in your experience, do boards of directors actually take into account the height of personal income taxes in determining dividend policy -- now and then, or usually? A. I think you would have to classify corporations into different categories to say that. If you are speaking of public companies, I would say that is not a factor at all.

Q. But in some private companies? A. In some private companies it may be.

Q. Perhaps I should not ask you this, seeing that you have not the information, but do you think it would be reasonable to inquire into the advantages and characteristics of the cooperative in the same way in which we have been comparing unincorporated business with the business of corporation, to see whether the cooperative fits into this scheme from the standpoint of advantages or disadvantages? A. It might.

Q. You think that would be reasonable? A. Yes.

Q. One more question -- these questions are relatively simple I think. On page eleven of the brief you have given some statistics? A. Yes. They were taken from the Canada Year Book.

Q. Do you intend us to conclude that the total business of cooperatives has grown during this period, or do you intend us to compare this growth with the growth of business in general to see whether cooperative or non-cooperative business -- A. Pardon me for interrupting, sir. The purpose was merely to show the growth of cooperative business. I have no information to enable me to compare it with non-cooperative business.





Q. With regard to the letter from Mr. Dunkley, you included that because you thought it would have an important significance for us? A. No. I included it because the terms of reference referred to the growth of cooperatives. That was my purpose.

Q. I have been very much interested in it, as a matter of fact. Have you any information that would help you to answer this question: Supposing the facts presented here are correct, would it appear to you that the price paid to Mr. Dunkley was a good price, or do you care to express an opinion on that? A. I would say it was the price paid for a monopoly, but it was a price which the ordinary corporation probably could not meet because of the situation in which they are placed.

Q. You would suggest that the pool can pay that price? A. Yes, because any profits they make are not diminished by the toll of taxation under the statute.

Q. So that they are paying to Mr. Dunkley part of the profits they expect to realize from tax exemption? A. That is my conclusion; it is the inference I wish the Commission to draw.

BY MR. PARKER:

Q. On page four of the brief you state: "Cooperative bodies as defined in the Act are, therefore, more favourably placed than even a private individual under the provisions of the Excess Profits Tax Act." When you say "defined in the Act", you mean the Income War Tax Act? A. Yes.

Q. Will you tell me where cooperative bodies are defined in that Act. A. Yes. I mean, organized under the provisions of section 4 (p). That is what I mean by their



being so defined.

Q. That deals with a lot of things. Where did you get your definition? That is something the Commission has been striving to find out. The Commission has been endeavouring to find out what a cooperative body is, and if there is a definition in the Income War Tax Act we have been wasting our time on a long trail. Can you tell me? A. Shall I say what I intend to convey?

Q. Yes. A. It is a body which markets the products of members or shareholders under an obligation to pay to them the proceeds from sales on the basis of quantity and quality less -- and this is the definition in the Act -- less necessary expenses and reserves.

Q. Let us read section 4 (p) once more: "The income of farmers', dairymen's, livestockmen's, fruit growers', poultrymen's, fishermen's and other like cooperative companies and associations...." Is there anything there that prevents cooperatives, supposing they start as true farmers' cooperatives, branching out into other types of business if that is done for the convenience of farmers? A. No.

Q. Do you see anything in the Act to prevent that? A. No. I don't see anything to prevent it.

Q. Could they go into the manufacturing business.

MR. SMITH: You are making him a better lawyer now.

MR. PARKER: Well, he has purported to give his views on the interpretation of the section.

THE WITNESS: I am afraid I am missing the point of the question.

MR. PARKER: It would appear that your Counsel does not want you to answer it, so I will not bother you.



THE CHAIRMAN: In your preliminary statement you did enter into questions of law.

THE WITNESS: And now I am faced with the problem of answering questions of law. As a matter of fact, however, I said I was speaking as an accountant and not as a lawyer. I never assumed any knowledge of law.

MR. PARKER: A man can get up and assure us that he will not be profane and then pour forth a steam of profanity, but the mere fact that he said he would not be profane does not prove that he isn't. However, we will not argue it.

THE WITNESS: I may have discussed the subject but not as a lawyer.

BY MR. ARNASON:

Q. May I ask Mr. Richardson a question which bears to some extent on the definition included in 4 (p). On page sixteen of your brief, Mr. Richardson, you say this: "The test of a true cooperative qualified for exemption under section 4 (p) of the Income War Tax Act is: 'It must be a cooperative of primary producers, which markets the products of the members or shareholders'." That is in quotation marks.

MR. PARKER: I had that passage marked. I was going to ask you a question about that. However, go ahead.

BY MR. ARNASON:

Q. Where did you get that quotation from? A. You must not overlook the words I have there "qualified for exemption under section 4 (p)". I am not defining cooperatives. I say that a cooperative which is qualified for exemption must be a cooperative of primary producers.

THE CHAIRMAN: Is that sentence taken from elsewhere?





THE WITNESS: No; it is my own.

THE CHAIRMAN: Why is it in quotation marks?

THE WITNESS: That is a mistake.

THE CHAIRMAN: Then the quotation marks should be taken out.

THE WITNESS: Yes; it is my own impression.

BY MR. PARKER:

Q. Your own impression summarized? A. Yes.

BY MR. ARNASON:

Q. I wonder if you would explore your ideas a little further in this regard. I am trying to get a development of your own views so far as this question is concerned. You say that all producers of manufactured goods or articles "are, therefore, excluded from the benefits conferred on primary producers by this statute."

A. Yes. It should not have been in quotation marks.

Q. That sentence I have just read is not in quotation marks. I want to ask a question arising from the sentence. When we speak of the marketing of the products delivered by primary producers, would you agree that the function of that marketing process is to place the product in a position in which it can be sold to the consumer? A. No; I don't agree with that.

Q. May I ask this question then. Following that up, would you say that the producer of fluid milk who delivers his milk to a cooperative which is located in a city that has a milk pasteurizing by-law would be dealing with a cooperative coming outside the scope of 4 (p)? Would you suggest that the pasteurization of that fluid milk would place that cooperative outside the scope of the section? A. It is very difficult to say just to what extent the process must go. I can give an illustration



of exactly the type to which you refer. There is in Vancouver an association of producers which delivers to a central agency, which central agency again sells to the independent operators. The pool is comprised of the members producing the primary product and they do not add to it. They neither pasteurize it nor do anything else but deliver it to independent distributors, who have a separate pool of their own. That is the type of cooperative which is meant and intended by the Act.

Q. That is where no processing takes place?

A. They don't do any processing.

Q. Would you say the same would apply to a cooperative operating a butter plant? Would you say that a cooperative which accepts delivery of cream from its members and churns that cream into butter would thereby place itself outside the scope of section 4 (p)?

A. I had better qualify my answer. Speaking as an accountant, I say that if a concern wishes to obtain in the immunities of the Act, the benefits conferred by statute, it must comply strictly with the terms of that statute. The Act as I read it does not give power to add anything to the primary product.

Q. That is, the sales process cannot be completed under the statute without in your opinion placing the cooperative in a taxable position? A. That is my contention, yes.

BY MR. PARKER:

Q. At the risk of a slight repetition, I would put that another way. Look at page sixteen of the brief. Read those two or three sentences again. A. I must withdraw what I said a moment ago with reference to the quotation. I remember now the source from which I got it. It is from Stikeman.





Q. Let us leave the quotation marks in then.

A. He is one of the chief solicitors in the Income Tax Department.

Q. Let us see what you say about it: "The test of a true cooperative qualified for exemption under section 4 (p) of the Income War Tax Act is" -- and you adopt as your own the wording used by Mr. Stikeman. You agree with his statement? A. Yes.

Q. Whether he said it first or you say it now makes no difference. It is your view? A. Yes.

Q. Assuming the statement is yours, why do you say that a true cooperative must be a primary producer? I do not see the words "primary producer" mentioned anywhere in 4 (p). A. No.

Q. Then why do you agree with Mr. Stikeman and adopt the statement as your own, thus limiting the scope of 4 (p) and declaring it to be limited to primary producers? A. Because I regard them as the people referred to in the Act.

Q. And those people are -- A. Farmers, dairymen, livestockmen, fruit growers, poultrymen, fishermen and other like cooperatives and associations.

Q. What do they cover? A. Primary producers, and they are the same type as these.

Q. And you say -- A. I say they are primary producers; the Act itself says "and other like cooperative companies." So that it must apply to cooperatives of primary producers.

Q. Let us accept that for the moment for the sake of argument. If they are primary producers to the extent of 50 per cent of their business and manufacture the other 50 per cent, are they qualified? A. They must add nothing



to the product. If they add anything to the product they are disqualified.

Q. What do you base your opinion on -- anything in the Act which says that would disqualify them?

A. The Act says "which organizations market the products of the members." Therefore a product which has anything added to it by process of manufacture is not a primary product.

Q. But suppose a man is an honest-to-goodness primary producer within the meaning you attach to those words, and suppose he does so many thousand dollars' worth of business, and he does half as much again in another type: does that disuqlify him under the Act?

A. Are you speaking of an individual or a society?

Q. I am referring to the people to whom this is supposed to apply. A. In my opinion, if the society engages in the manufacturing process it is automatically placed beyond the scope of this.

Q. Even if it is only 10 per cent? A. Any percentage.

THE CHAIRMAN: You might offer the principle of ejusdem generis. Your Counsel will approve of that?

MR. SMITH: Very much.

MR. PARKER: But he could not say that except as a lawyer. At any rate, that is your opinion?

THE WITNESS: Yes.

BY MR. PARKER:

Q. And you base it on your interpretation?

A. Yes.

Q. On page thirteen you make a statement at the bottom of the page, after making some references to the Southern Alberta Dairy Pool, and you conclude by saying



that they have not complied with the requirements of this section? A. Yes.

Q. Can you tell me on what you base that? What have they done which disqualifies them? I think Mr. Milvain might be interested to know.

MR. MILVAIN: I am interested to hear.

THE WITNESS: This thing is based entirely on their published accounts which I have attached to the brief.

BY MR. PARKER:

Q. And if one properly analyzes those accounts they answer the question I have put to you? A. Yes. I am prepared to analyze it for you.

Q. Do you say that their statement properly reflects their method of operation? A. I have no knowledge of their internal operation. All the knowledge I have acquired is that shown by their accounts. If they reflect the true and correct position and affairs of the company, then I must say --

Q. If the statement which you have attached truly reflects their operations, their method of operation itself that it disqualifies them for exemption under 4 (p)? A. That is my opinion, yes.

Q. You have read into the record your definition of profits? A. Yes.

Q. Was that definition framed on the basis of "profits" as used in the Income War Tax Act or on the word profits as an economist would define it? A. Profits as determined by a company's accountant are not necessarily those which are admissible for income tax purposes.

Q. That is, there may be two different things to which we apply the word profits. You may be defining one and we may want to know what the other is. I, for one,





want to know which is the one you are talking about in your definition. A. There are many types of profits.

Q. But I am asking you which one of those types your definition is supposed to cover -- all of them or one of them? A. It covers profits as determined by custom. It is what profits are from the accounting standpoint.

Q. I am asking you if that is the proper definition that should be given the word profits where it appears in the Income War Tax Act? A. Yes; but you would have to qualify that by saying that the Act is so hedged around with qualifications that what may not be admissible for income tax purposes may be profits as determined strictly in accordance with the definition. I have given.

Q. To come back to the earlier section of the Income War Tax Act, do you make any distinction between gain and profit? A. No; I regard them as synonymous terms.

Q. Do you in interpreting the Act use them as being equivalent one to the other? What section is it? A. Section 3. There are certain gains which are not profits within the terms of the Act, capital gains.

THE CHAIRMAN: "Gain" is a more comprehensive term than profit?

THE WITNESS: Yes, there is no doubt about that.

BY MR. PARKER:

Q. They are not used synonymously in the Act?

A. No.

BY MR. NADEAU:

Q. On page four of the brief there is a sentence which interests me a good deal. You say that cooperative bodies under the Act are more favourably placed than even



a private individual under the provisions of the Excess Profits Tax Act? A. Yes.

Q. Do you mean an individual doing business alone? A. An individual doing business alone.

Q. Or in partnership? A. It does not matter.

Q. Will you explain to me how you arrive at that conclusion? A. It is a special provision of the Excess Profits Tax Act: "The following profits shall not be liable to taxation under this Act" -- section 7. It mentions the profits of taxpayers referred to in (d), (e), (f), and (p) of the Income War Tax Act.

Q. It means that cooperatives as such are exempt under these as well as under 4 (p) of the Income War Tax Act? A. Yes.

Q. But I do not see the relation between an individual and a cooperative association. A. The point I was trying to make is that an individual engaged in business is liable to the excess profits tax, but a co-operative society is not liable if it can obtain exemption under the Income War Tax Act.

BY MR. MILVAIN:

Q. Just one or two questions. Reference has been made to several of the cooperatives for which I appear. I do not propose to cross-examine Mr. Richardson on his legal opinions, but I do not want my silence to be taken as implying that I accept them. I do not know whether I understood you properly, Mr. Richardson, when you were reading your brief. You mentioned certain figures taken from the balance sheet of the Southern Alberta Dairy Pool and you pointed out that there were total assets of \$67,000 roughly, and the members' equity amounted to \$32,000? A. Yes. Those were the fixed assets of the





business. That statement is not intended to include other current assets they may have.

Q. A. I wrong in believing that the point you were making was that there had been in effect an appreciation of members' capital interest? A. No. The members had not contributed nearly sufficient to cover the capital assets possessed by the cooperative. That is what I intended to convey.

Q. By the way, you have been in the accounting profession for many years? A. Yes.

Q. There are differences in methods of accounting in different firms? A. Yes.

Q. And unquestionably cooperative accounting is dictated on a somewhat different basis from joint stock accounting? A. I don't audit any of them.

Q. You have never had anything to do with cooperative auditing? A. There is one in our office but I have never seen their accounts.

Q. Where did you get a copy of the last balance sheet? A. From the Registrar's office in Edmonton.

Q. The Registrar? A. The Registrar of joint stock companies.

BY MR. ARNASON:

Q. Do you think the organization which you represent would have any objection to furnishing the Commission with the latest copy of their audited financial statement?

A. I happen to be secretary of the United Dairies, which controls three of these companies, and I shall be glad on their behalf to undertake to supply this.

Q. It would not be too much trouble? A. No. I cannot speak with regard to other people but I will communicate with them and ask them to furnish this statement



directly to the Commission and not through me, because I don't audit for them and they would not wish me to have access to that information. Would you wish to have that done?

MR. ARNASON: Yes, I think so.

MR. PARKER: It should be directed to the Registrar.

THE WITNESS: Yes.

THE CHAIRMAN: They might be sent to Ottawa.

THE WITNESS: Yes; I shall be glad to have that done.

THE CHAIRMAN: Do you wish to say anything, Mr. Smith?

MR. SMITH: Nothing further, thank you, sir.

THE CHAIRMAN: Have you any more grist for the mill, Mr. Parker?

MR. PARKER: I still have three. One is the Automobile case I mentioned before.

THE CHAIRMAN: It is quite obvious that we shall have to sit tomorrow. Personally, I would be glad to adjourn now. Do you think we can finish these three tomorrow? Major Woods suggests that we meet earlier in the morning and complete everything by noon.

MR. PARKER: Of the three, two may be very short.

CHARLES HILTON,

Southern Alberta Section,  
Canadian Automotive Wholesalers Association,  
having been duly sworn testified  
as follows:

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BY MR. PARKER:

Q. Where do you reside? A. 229, 17th Avenue,  
West Calgary.

Q. In what capacity do you appear? A. I am  
representing the Canadian Automotive Wholesalers Association,  
Southern Alberta Section.



Q. Is that an incorporated body? A. No. It is a group of business men, both corporate and incorporate, that belong to the association.

Q. They deal in a wholesale way? A. In automotive supplies, accessories and things of that description.

Q. What official position do you hold? A. Just a member.

Q. How was that brief prepared? Who prepared it? A. Myself and another man.

Q. What is his name? A. Mr. Cavanagh.

Q. What is he in your association? A. A member, like myself.

Q. How many members have you? A. Fifteen or twenty.

Q. Did you meet and discuss this matter? A. The Southern Alberta Section has about eight members.

Q. That is the section you are speaking for. You met and talked the business over and you were asked to prepare their views and after you prepared it did you submit it to the group to see if they agreed with it? A. Yes.

Q. And have they? A. Yes.

Q. Will you read the brief.

THE WITNESS: Our brief reads as follows:

"This Association, the Southern Alberta Section of the Canadian Automotive Wholesalers Association, is desirous of placing before you the unanimous opinion of the members of our organization as regards the tax situation as it affects various types of business.

"We realize more keenly the hard and sober fact that when taxes are remitted or excused any class of business, that the rest of us who are fortunate enough to remain are





compelled to make up that tax deficit in some manner or other. The tax burden is, therefore, the heavier on all those remaining and that is one reason why we ask permission to submit this brief, and a second is that cooperatives have already entered our field of activity.

"The Canadian Automotive Wholesalers Association is composed of corporations and individually owned companies in the business of distributing automobile, truck and tractor parts, equipment, tools, accessories and supplies to retail garages, automobile and implement dealers, service stations, repair shops, paint and body shops and other similar retail service outlets. It is a national organization with sections in each of the provinces.

"We believe in the 'Principles of Private Enterprise' as set forth in the Report of the Private Enterprise Section of the International Business Conference held at Rye, U.S.A., as follows:-

1. Equality of opportunity.
2. Equality under law.
3. Reward for initiative.
4. Privilege for thrift.
5. A tax structure that encourages incentive and risk.
6. Restriction of monopoly.
7. Abstinence of government from competition with private business.
8. Freedom of production and sale.
9. Equitable distribution of profits with consumers' and labour's interest safeguarded to the end that more and more things may be supplied to more and more people, thereby producing more employment at the highest possible level of wages.



10. Government -- under law -- that will provide encouragement to business through provision of an economic atmosphere in accordance with the above principles.

"(a) Our idea of a free and democratic country is one where each and every individual or group of individuals can use or pool his or their own capital, ideas and personal effort in any business endeavour in keeping with the laws governing such endeavours. The opportunity to risk capital, initiative and energy should be open to all on an equal basis.

"(b) Many men and women will return from this war desiring to enter into business on their own and they are entitled to an equal opportunity to better themselves without having to pay a greater tax load because of the fact that other institutions have been excused that responsibility of sharing the nation's debt.

"(c) We are opposed to any organization, group, government, government agency, association or individual being permitted to engage in business in competition to private enterprise unless such groups, organizations and individuals bear their fair share of the tax load and in other respects operate under similar restrictions, regulations and burdens as private business.

"(d) In this province the government has gone into business in competition with banks, in competition with insurance companies and in competition with automobile and tractor parts firms. As government institutions these activities pay no taxes. It might be argued that these particular ventures are non-profit making, hence would pay no income or excess profit taxes. More reason then to close





them out because the business would then be diverted to tax paying channels. Furthermore, any losses they make are made up out of general revenue, which in turn increases the tax burden on all private business.

"(e) By exempting cooperatives or other similar businesses from taxation, such cooperatives are enabled to build up surplus to use in an over expanding development to the detriment of private business which cannot accumulate surplus under the present system. It is unfair, unjust and inequitable that shareholders in private companies pay income and excess profit taxes first and then if they are fortunate enough to get dividends, again pay income taxes as individuals. This is discriminatory taxation.

"(f) Under present conditions everyone realizes that exceptionally heavy taxation is necessary, but that taxation should be equitable. Every business unit should bear its share just as every individual should bear his share. A tax structure that is fair and just will encourage the development of latent ideas into practical operation in the form of new ventures, new fields, new expansion creating more employment, thus more people on the income tax roll.

"(g) The favouring of cooperatives, mutual companies and government operated businesses by tax exemption, encourages the converting of more and more business to the cooperative basis of operation, which if carried through to the ultimate conclusion creates a tax burden on the remainder, that spells the doom of free enterprise and open competition.

"(h) A tax structure that is fair, just and equitable will bring out the best in all citizens to develop the country's potentialities to the utmost. It will attract the



right kind of immigrants and capital to increase our population and lower the per capita cost of government and the National Debt.

"(i) In brief, this Association believes that either all cooperatives, government operated business mutuals and similar businesses should be taxed the same as private business or all corporation taxes should be removed.

"We cannot see any justice or fair play in exempting one class of business from taxation, thus forcing the burden of National Debt on other business.

"We cannot see why the shareholders in private enterprise companies should have their company taxed to prevent accumulation of surplus in favour of shareholders in a cooperative venture."

THE CHAIRMAN: We are grateful to you for your presentation Mr. Hilton. It is a matter of argument and there is no examination required. We appreciate your coming before the Commission.

MR. PARKER: A gentleman from the Okanagan Valley is here, Mr. Chairman. I do not know whether he wants to get away tonight.

THE REGISTRAR: This brief was received in Vancouver too late for reception there, and Mr. Clarke happens to be in Calgary.

MR. CLARKE: I would be glad to present it now, or I can do so in the morning if that is more convenient.

THE CHAIRMAN: It can be heard now.

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EVERARD CLARKE,

Secretary,  
Okanagan Valley Co-operative  
Creamery Association,  
having been duly sworn testified  
as follows:

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BY MR. PARKER:

Q. You are secretary of the Okanagan Valley Co-operative Creamery Association? A. Yes.

Q. How long have you been associated with the business? A. Twenty years.

Q. As secretary? A. Yes.

Q. Were you with the company when it was originally formed? A. I was with it for about three months.

Q. And have been with it continuously ever since? A. Yes.

Q. Will you read the brief. A. I should express, Mr. Chairman and gentlemen, my appreciation of the Registrar's courtesy in writing to me and pointing out that it would be better for me to present the brief instead of mailing it. I also appreciate your courtesy in being prepared to listen to it. It reads as follows:

"Submission for Royal Commission on Co-operatives  
by Okanagan Valley (Noca) Co-operative Creamery  
Association."

(Authorized by Board of Directors)

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"1. The Okanagan Valley Co-operative Creamery Association was organized in 1925 by dairy farmers of the North Okanagan under the Co-operative Associations' Act of British Columbia.

"2. The Association has 1,256 farmer members who have each subscribed to five qualifying shares with a par value of \$1.00 each.





"3. The Association rented its premises and equipment from Burns and Co., Limited, Reg. Office, Calgary, Alberta, until January 1, 1936. At that time an option was secured from Burns and Company to purchase the buildings, plant, land and equipment from the Company. On January 1, 1936, the Association made a cash payment of \$10,000 for 100 shares of capital stock in a holding company established for the purpose of affecting the transfer of ownership from Burns and Co. Limited to the Association. The Association obtained an option to purchase the balance of all stock in the holding company within a ten-year period.

"4. On February 1, 1944, the Association purchased a milk and ice cream plant, known as Perfection Products and operated by F.A. W. Grahame of Vernon.

"5. The Association has exercised its option to purchase the balance of the shares in Okanagan Creameries Limited held by Burns and Co. Limited. Such purchase was effective January 1, 1945.

"6. Since its organization in 1925, approximately twenty years ago, it has been the constant endeavour of the Association to produce high quality dairy products. Progress has been made through a continuous educational campaign conducted by the Association among its members, materially aided by the Provincial and Federal Departments of Agriculture.

"7. Efforts have been put forward by the Association and governmental departments to encourage the improvement of dairy herds through:

"(a) Cow testing.

"(b) Aiding in the distribution in the North Okanagan of high quality dairy sires.



"(c) Organizing an artificial breeding demonstration in 1939, at which Dr. S. N. Wood of the University of British Columbia gave a practical lecture to approximately three hundred farmers.

"(d) Financially aiding the formation of the first Artificial Breeding Association in British Columbia in 1944. (At Enderby, B. C.)

"(e) The publication of 228 issues of a 24-page monthly magazine, which has contained a total of approximately 32,700,000 words reporting to North Okanagan producers on developments of scientific agriculture. Appreciation must be expressed to governmental agencies for invaluable assistance.

"8. The Association has taken steps to encourage the production of better dairy feeds for cattle.

"(a) Through reporting methods of haying.

"(b) Through a continuous campaign to encourage the growing of hybrid corn for ensilage.

"9. The Association has taken steps to improve farm living conditions through:

"(a) Conducting a continuous farm safety campaign and in particular reporting to members upon the dangers to life and limb resulting from careless handling of dairy sires.

"(b) Organizing the North Okanagan Rural Electrification Committee for the purpose of bringing electric power to 1,415 farm homes at present without it.

"10. Electricity is found on only a small percentage of farm homes in the North Okanagan and contiguous areas. The majority of our members depend on some type of mantle lamp, but a large number still must use the coal oil wick lamps. The typical heating unit is a wood stove only, a





small percentage having a furnace or some other type of central heating unit.

"11. A number have gas-powered washing machines, but a far greater percentage have only hand-power washing machines and many members' wives are without equipment of either type. Radios are common and a substantial number of homes of our members have sewing machines. A small number have telephones.

"12. Very few homes are serviced with some type of sink. Running water, bath tubs of the type found in cities are rare, as are flush toilets, sewage disposal or septic tanks. These items, considered essential in cities, are almost non-existent in almost all homes of members of our Association.

"13. It is believed that power lines must march out into every rural area in which our members dwell. Electric power, at a cost comparable with city rates, is the basic foundation of essential farm home comforts.

"14. In the marketing of dairy products the Association acts as the agent of individual members. As a corporate body the Association has no income whatever. If, through prudent management, and after making an initial payment, based upon established prices, sales of members' dairy products result in additional income, this surplus return is allocated to each member in proportion to the amount of milk or cream consigned for sale through the Association by each. These deferred, or final, payments to members by the Association cannot be deemed to be either income or profit of the Association.

"15. The Department of National Revenue has, quite rightly, appointed a commission of enquiry to investigate



all cooperative enterprises in Canada with regard to corporation income and excess profits taxation. Our association welcomes this study. As a bona-fide non-profit farmers' organization with no income of any kind, our organization has nothing to fear.

"16. Our Association has been built from a humble beginning, from the ground up, by farmers whose one desire was to take democratic action to help each other on a classless basis. This was their earnest intention and is, we believe, a practical expression of true Christianity. Membership can include persons of all political views, all religions, sects, and all races of men, who are, or were, able to consign shipments of milk or cream to the Association and who will abide by the rules.

"17. Since its organization in 1925, members have received a premium, a payment in excess of market prices, of approximately half a million dollars (\$500,000). This additional income for members has been paid in the form of cash and ownership revolving fund share certificates. The additional 'extra cash income' in the hands of farm families has greatly assisted them in building up their home community. The Association and most members have for twenty years followed a definite policy of purchasing, with monthly cream and milk cheques, in the local community. Our most helpful friends are home merchants. The Association, in 1925, took as its enemy the mail order house and any other competitor of the British Columbia home community merchant. We have never deviated from this steadfast policy of home community building.

"18. The following detailed financial analysis of the Association's operating methods will prove of great interest to the members of the Royal Commission. It is with



deep respect that we suggest a careful perusal of these facts by the Commission.

"19. The milk and ice cream department of the Association is operated as a separate department, the income of which, after operating costs and reserves for contingencies have been taken care of, goes entirely to milk producers. Producers consign their milk to the Association, which, as their agent, makes an advance payment which was established in this area by the Wartime Prices and Trade Board as the 'established milk price.' There is a further payment to milk producers at the end of each yearly period. This is paid to each in proportion to his total shipments of milk. There is no income accruing to the corporate body as a result of operations of the milk department (see paragraphs 14, 23, 27)

"20. The buttermaking department of the Association is operated as a separate department, the total income of which, after operating costs and reserves for contingencies have been taken care of, goes entirely to cream producers. Producers consign their cream to the Association, which, as their agent, makes an advance payment which is the market price of butterfat in this area established by competitive conditions which are the result of the proximity of the established cream market in Alberta. (Advance payment to members is usually from 4 cents to 8 cents per pound higher than Alberta established market). There is a further payment to cream producers at the end of each yearly period. This is paid to each member in proportion to his total shipments of butterfat (see paragraphs 14, 23, 27).

"21. The Association has had a 20-year project in hand, the objective of which was to acquire ownership of creamery buildings, equipment and lands upon which buildings





were situated (see paragraphs 3, 4, 5). On January 1, 1945, this objective was attained and members' equity allocated to them at the end of each year in the form of shares has been instrumental in enabling the Association to buy creamery and dairy plants which were owned by private individuals or corporations.

"22. The Association is now asking members to approve a first mortgage bond issue which is to be sold to members only for an amount of \$50,000. This is to be liquidated within a 10-year period in the same manner as has heretofore resulted in the Association reaching a financial position which enabled it to purchase creamery and dairy plants (see paragraph 5).

"23. Payment to producers at the end of each year, on the yearly period, has been made through cash and/or the allocation to each member of the balance owing to him, in the form of \$1.00 par value share certificates. The revolving fund principle is being employed and when the time is reached that the Association is cleared of indebtedness, certificates are to be redeemed in cash at par. First shares to be redeemed will be the first shares issued and so on from year to year the oldest outstanding shares are to be redeemed.

"24. In regard to the question of income tax exemptions accorded agricultural cooperatives by the dominion law in Canada, the Association feels that it is in a position to discuss this question.

"25. Some of the charges made on this subject by those opposed to cooperatives give the impression that large amounts of revenue are wholly escaping taxation. This is not the case in regard to our Association, as will be seen from a careful perusal of this submission. These charges are



largely due to a lack of knowledge concerning the actual operation of agricultural cooperatives rather than to deliberate misrepresentation. No preferential treatment has been accorded to producer cooperatives which have acted solely as agents of the producers and as such agents had no corporate income. There was no income available to be taxed (see paragraphs 19, 20).

"26. Farmers generally are in the debtor class. The majority of farms have mortgages on them. Farmers do not have large resources in the form of free capital for investment. Neither are Okanagan farmers, as a class, able to borrow money on advantageous terms compared with commercial trading or industrial interests. Only through uniting together in the form of agricultural marketing cooperatives are farmers able to acquire financial capital for the facilities required to assemble and process their cream or milk (see paragraphs 10, 11, 12, 13).

"27. As a corporate body our Association has no income. Advance payments are made upon receipt of cream or milk based upon established marketing conditions. There may be a tendency on the part of some to regard the payments which have been made at the end of each year, in the form of cash or \$1.00 certificates, as based upon income to the cooperative which is escaping taxation. They are, in fact, adjustments with patrons based upon final selling transactions of the Association, as agent of members, which the Association is under obligation to make. They are a settlement with members of an excess collection from the sale of members' products (see paragraphs 19, 20).

"28. It has never been suggested that any corporation or individual should be required to pay income tax on the capital contributions which it receives from stockholders.





No more should a farmers' cooperative be required to pay income taxes on capital contributions which it requires from members or patrons, who, like the stockholders of an ordinary commercial corporation, are the true owners of the business.

"Respectfully submitted,

Okanagan Valley Co-operative Creamery  
Association."

BY MR. PARKER:

Q. Do you do any buying and selling? A. We receive the cream or milk shipped by members on the basis of consignment.

Q. Have you a written contract? A. No.

Q. Where we can see evidence of what the terms are? A. We operate in a different way from most organizations you may encounter in Canada. We operate on a monthly pool basis. We don't pay for the milk or cream until the fifteenth of the following month. The result is, if it is milk, that for all the milk received and sold we receive money and are able to make accounting to the members.

Q. But you keep one month behind? A. Fifteen days. The same applies to the creamery department. We settle with members on the fifteenth of the month. They receive the January advance payments on the fifteenth of February approximately.

Q. I merely wanted to ask if there was a written contract setting out all these terms? A. No. There never has been.

Q. You are incorporated under the British Columbia Associations Act? A. Yes.

Q. Did you adopt the standard rules? A. Yes.



Q. Without modification? A. Yes. We think they are out of date.

Q. Perhaps they are, though I did not think that anything in British Columbia was out of date. The point is the rights and obligations of the grower in the association. They are defined by the articles and not in any separate agreement? A. No.

Q. Or is it defined by a series of resolutions passed? A. There have been a series of resolutions but we operate as a real cooperative association.

Q. I appreciate that. A. It is important to understand clearly what a cooperative association is. You cannot have an income.

THE CHAIRMAN: You contend that you have not and others have?

THE WITNESS: Our organization has no income as a corporate body, and that is my distinction.

BY MR. PARKER:

Q. Has your company any assets? A. The members own the assets.

Q. Does the company own the assets? A. I am afraid perhaps we think in different terms, but the members own the assets of the association.

Q. Why did you take the trouble to become cooperative? Why didn't a number of you get together and say, "We will buy this plant?" A. We wanted to be incorporated, to have a corporate entity.

Q. Why did you need a corporate entity? A. It would be difficult to conduct business if it were not a corporate entity.

THE CHAIRMAN: It would be difficult to escape unlimited liability too?



THE WITNESS: I am not a lawyer; I can't answer that, sir.

BY MR. PARKER:

Q. Whatever you are doing is set forth in the minutes and in the articles and memorandum? A. Yes.

Q. There are no contracts? A. No.

Q. But through the system of the revolving fund you have acquired substantial assets? You are growing?  
A. Yes.

Q. It may be debatable whether it is the members or the company, but they have been acquired by somebody?  
A. By the members of the association.

Q. If you insist on that. Anyhow, the business is going ahead and assets are being accumulated for somebody?  
A. Yes.

Q. And you are about to place a bond issue on the physical assets to raise an additional \$50,000? A. Yes.

Q. What do you need that for? A. Because on January 1 we are taking over two creamery plants which were owned by the Okanagan Creamery Company.

Q. Was it a limited company? A. Yes, in which Burns and Company had a majority of shares.

Q. Why did you not carry on the way you were?  
A. The reason for taking it over is that it has been the ambition and objective of the members to have their facilities for manufacturing and handling their own products.

Q. Previously you had been renting? A. Yes.

Q. Was it cheaper to buy than to rent? A. I don't know that it would be particularly cheap but there will be the difference that the members will own the means of processing their products, to which they appear to attach





considerable importance.

Q. That is what the \$50,000 is for? A. Yes.

Q. One other question. On the last page of the brief you state that the corporate body has no income. I quote: "Advance payments are made upon receipt of cream or milk based upon established marketing conditions. There may be a tendency on the part of some to regard the payments which have been made at the end of each year in the form of cash or \$1.00 certificates as based upon income to the cooperative which is escaping taxation. They are, in fact, adjustments with patrons based upon final selling transactions of the association, as agent of members, which the association is under obligation to make." Where is the obligation? A. Well, the association has not a written contract with members. It has been operating twenty years carrying on in this way and it has taken it for granted that it is obliged to do that.

Q. But only as the directors may from year to year decide? A. That is not right. It would be only as the general meeting would decide. The directors can only recommend to a meeting of members.

Q. How many members are there? A. There are twelve hundred.

Q. Suppose you have an annual general meeting and the majority present decide not to pay this back or to credit it to the members; they could do that? A. Yes, I believe they could.

Q. Therefore to the man who disagreed with the majority, the obligation to pay his back would not be very valuable? A. You mean the surplus left over at the end of the year?

Q. The final settlement. A. Well, I can't imagine



a member not wanting to have his share of that.

Q. But suppose they decided they wanted to hold it back and to invest in what they considered a worthy cause. What then? A. He has the right to argue.

Q. But has he the right to get it? A. The majority rules.

Q. I understand that. A. If you are referring to the member and asking whether he will get his money back, it is in the revolving fund.

Q. Let me put just a simple question. A man has had part of the price of his cream held back and it is used as the directors or shareholders from time to time determine, to enlarge plant or to do anything they see fit. Take the minority fellow who does not want to fall in line and who says, "I think that is a wrong policy; I delivered my cream under terms which included an obligation to pay that back to me and the majority now decide they won't give it back. I won't stand for that." Can that man get it back? A. He can't get it on that instant but he will get it when everyone else gets theirs.

Q. If they decide to give it to him? A. His turn comes when everyone else's does and he will get it automatically.

Q. Only if he leaves for the next ten years an equivalent amount? A. His money is in the assets and he can't walk in and ask for a chunk of the office. He will have to leave it there for a proper time.

Q. Until they decide to make it available to him? A. Until it is available.

Q. Isn't that the same thing? A. If at the end of a period of time the indebtedness was entirely paid off there





would be no object in accumulating further sums of money. There would be no purpose. The purpose is to redeem the earliest certificates and to do that from year to year. In other words, people who use the facilities of the association will own them and those of the past will get their money out and do what they like with it.

Q. That is satisfactory to me if it is to you.

A. It is.

MR. MILLIKEN: The same type of question has been put to a number of witnesses. As a lawyer, I take the position that if a cooperative holds out to its members the undertaking to pay patronage dividends and any member feels aggrieved he can sue the association if he wishes to do so. If anyone feels that a legal obligation is not being lived up to that person can sue.

THE CHAIRMAN: That is what the courts are for, is it not?

MR. MILLIKEN: I think so. These witnesses are being asked a very fine point of law.

BY MR. PARKER:

Q. One other question. Will you explain how you propose to pay back the \$50,000 which you intend to borrow on the bond issue? A. In the same way. The bond issue is for sale to members only and at the end of the year, if, instead of taking cash payments they will take certificates, which constitute an obligation on the part of the association, a liability set up in the ledger, any member can walk in at any time and ascertain how much he has there. He has also a certificate, which is the same as a receipt. The principle of paying back the \$50,000 bond issue to members will be exactly the same. At the end of every year they will issue certificates to pay the bonds.

The Commission adjourned at 4.45 p. m.



Wednesday,  
January 24, 1945.

The Commission met at 9.30 a. m.

MR. PARKER: I propose to have submitted to you this morning, Mr. Chairman, the brief prepared on behalf of the Alberta Board of the Retail Merchants Association of Canada. The representative is Mr. L. R. Lipsett, K. C. This brief is of considerable length and as I understand it there are some statements of fact together with a considerable amount of argument. I know the Commissioners have all read the document carefully and I was going to be bold enough to offer a suggestion, which Mr. Lipsett might follow if he felt he was doing justice to his case. That suggestion is that he might read selections from it and make a few remarks emphasizing the parts he considers most important. That might save time -- not that I have in mind trying to curtail his presentation. I merely make that suggestion in the hope of expediting the work of the Commission.

MR. LIPSETT: Thank you very much, Mr. Parker. I may say, Mr. Chairman, I had the benefit of a word or two with my learned friend before the Commission met, and I am in entire agreement with the suggestion he has made. What I would propose to do is this, so as to make the document evidence as far as possible. I intend to call possibly, when I have dealt with it, Mr. MacKay, . Secretary of the organization, and have him sworn and state generally that the brief, in so far as it is factual, has been prepared from the best information available, and in cases where it is derived from documents I have indicated the source of information and Mr. MacKay will be available for elucidation of anything that is not clear either to my learned friend or



to anyone else. I have three or four additional copies.

My friend suggested that it might be possible, if there are others who think they would like to follow it, to hand out these copies so that they will have the whole brief before them even if I do not read it all.

There is one other matter, sir, which you might forgive my mentioning. It is partly by way of excuse or apology for errors -- and I am sure there will be some in the brief. One or two have been candidly pointed out to me in a friendly way by opposing interests and I welcome that, because I do not want to put before the Commission anything that is not absolutely accurate.

According to your programme, briefs had to be in by a certain time. A good many of us tried to comply with that requirement under difficult circumstances. I was up after midnight several nights trying to get the necessary information. Our brief is in, but I notice that the briefs of the larger organizations, or most of them, are not going to be presented until the Commission reaches Ottawa. I shall therefore have to rely on the help of my learned friend to bring out the facts on both sides; but the effect, as I see it, is that the briefs of these larger organizations will all be drawn after they have had the benefit of everything that can be said on the other side.

THE CHAIRMAN: That can hardly be avoided.

MR. LIPSETT: Possibly not. I do not think it can be avoided now, and I have no suggestions to make. I did not foresee it myself, but possibly all briefs should have been in by a certain date.

THE CHAIRMAN: That would have been possible if we had had much more time, Mr. Lipsett; but we were urged to get on our way very directly by Ottawa.





MR. LIPSETT: It is nothing in the nature of criticism, but I was going to suggest that my learned friend would to some extent help us in our difficulty because the presentation of these briefs at Ottawa will mean that every possible answer to anything we have submitted will be in the briefs, and it will not be practicable for this and similar organizations to attend again at Ottawa. I am sure, however, my learned friend will give all the assistance he can to the Commission.

THE CHAIRMAN: The Commission is quite alive to that, Mr. Lipsett, and consideration will be given that point in reading the briefs, and studying them.

MR. LIPSETT: Thank you, Mr. Chairman, now in that connection I would like to read the first couple of pages of the brief. It is submitted on behalf of the Alberta Provincial Board of the Retail Merchants Association of Canada Inc. That is an organization incorporated under special act. The brief begins:

"This brief is submitted on behalf of the Alberta Provincial Board of the Retail Merchants' Association of Canada, Incorporated under Special Act of Dominion Parliament, being 9 and 10 Edward VII Chapter 156 (Assented to May 4, 1910).

"The Association as a service organization, is operated through provincial boards set up under its constitution, and the membership of the Alberta Branch represents every district of the province. All sections of the retail trade are represented in the Association membership, and as individual merchants operating retail establishments, they render a valuable service to the general public in the distribution of all goods, wares and merchandise."



There is, I understand, a board in every province of Canada and it is run on very democratic lines, although each of the provincial boards does report to and is in close contact with the head body. Continuing:

"With a view to getting a wide expression of opinion from the retail merchants for the information of the Commission, a questionnaire was circulated to several thousand retail merchants throughout the province and although the time has been short, many hundreds of replies have so far been received.

"The unanimous expression of opinion contained in all replies is to the effect that it is becoming increasingly difficult and almost impossible for the retail merchants to continue in business and pay their current taxes, and at the same time compete with cooperatives and similar societies who are now exempt from taxation.

"It is desired, however, to emphasize that this brief is not presented in any spirit of criticism of or antagonism to, either the cooperative movement in general, or any cooperative organization in particular.

"The intention is to deal with the application to cooperatives of the Income War Tax Act, 1940 and the Excess Profits Tax Act, and with the tax situation created by the organization, business methods, and operations of cooperatives and similar societies;

"It is also intended to demonstrate the very serious comparative position into which directly competitive businesses have been driven by the current practice of not treating these taxing acts as applicable to the earnings or surpluses of cooperative and similar societies.

"While the correct interpretation of these taxation statutes is of great importance as regards existing government





claims for income and excess profits taxes from cooperatives, and as such will be dealt with later; the question may become relatively unimportant for the future, in view of the duty imposed upon the Commission, to report all facts pertinent for determining what would in the public interest be a proper basis for applying these Taxation Acts to cooperative and similar organizations, and the further duty to make such recommendations for the amendment of existing laws as are considered to be justified in the public interest.

"The outstanding questions for consideration thus would appear to be:

"(1) Do the present Taxation Acts fully cover the taxation of cooperatives and similar organizations?

"(2) If not, is the comparative position of competing businesses prejudiced?

"(3) What are the facts pertinent for determining a fair and equitable basis for taxation of cooperatives in the public interest.

"(4) What amendments of existing laws are justified in the public interest.

"It is contended on behalf of cooperative and similar societies that they are not taxable under the existing Tax Acts; the reason for this is largely historical. In Great Britain, cooperatives originated as friendly societies, and developed as industrial and provident societies. They were in the beginning, small associations composed of persons of humble means and not likely to be income taxpayers in any event.

"In Appendix A is set out a short historical sketch of such British organizations, and a note of the statutory enactments which originally gave them exemption from income



tax:-Even as late as 1905 a British Departmental Committee (the Ritchie Committee) whose report is partly quoted (in Appendix A) recommended against the trader's contention that returns to cooperative members should be subjected to income tax payments and pointed out that owing to the trifling returns, the revenue would lose rather than gain.

"Other British statutes including an Income Tax Consolidation Act passed in 1918, continued the exemption of cooperative and similar societies from taxation on their earnings (see Appendix A).

"The Canadian Income Tax Act first passed in 1917 (Statutes of 1917 Ch. 28, now Ch. 97 of Revised Statutes of Canada, 1927, as amended) was largely copied from the British Acts and was interpreted in accordance with the British practice.

"Under the 1917 Act the tax imposed on taxable incomes was 4 per cent with a super tax commencing at 2 per cent on excess of income over \$6,000. In 1918 these rates were increased, and a corporation tax was also imposed. It was first fixed at 6 per cent. After various fluctuations it remained at 8 per cent from 1928 until 1931."

I might pause here to say a word or two in reference to a very interesting statement which was made by Mr. Fitzpatrick on the first day the Commission sat here. That statement referred to the organization and the great expansion of cooperative associations in this province. While I am concerned chiefly with the retail merchants' position, you will see that the organization of cooperatives throughout the province is developing very extensively. As far as the retail merchants are concerned the law in Alberta, as I understand it, is this: that any ten persons in a locality who get the O. K. of Mr. Fitzpatrick, as



representing the government, can set up a cooperative store in any village.

The cooperative store when set up can compete in direct competition with the retail merchant who has to pay all the taxes that are levied under the Acts. Now the Act provides that no competing cooperative may set up within five miles except under special exemptions, so that a cooperative store when set up is completely free from competition by an organization which has the same advantages, as to taxation, which it has.

The retail merchant, on the other hand, can be put in a position where in a very short time he can be driven out of business by ten men in the neighbourhood who get a cooperative charter under the Act following the O. K. of Mr. Fitzpatrick. Now that seems to the retail merchants to open up a very disastrous and dark and gloomy future for them. Possibly at the present time, when there is a gentleman of the kindly spirit and **benevolent** attitude of Mr. Fitzpatrick, the risk might not be so great. But take the case of some official who is perhaps a little too much obsessed with the cooperative idea. The effect could be that under what might not be quite so benevolent a despotism, any small trader might be driven out of business in the province by ten men setting up a cooperative association to compete with him, now beside him.

According to the Act as I read it, that cooperative association when it is set up in the locality or in the village can sell to all and sundry. I can speak with knowledge myself because I have frequently bought in cooperative stores throughout this province, and I have never heard anyone being asked if he was a member of a particular





cooperative association. Moreover, membership is on such a wide basis under the Act that anyone can be made a member of a cooperative opposition store by simply going and buying goods there.

So that from the point of view of the retail trade, where there is this tax discrimination, the outlook is really a very gloomy one.

As I have said in the brief, the correct interpretation of the existing statutes may be a matter of some doubt. I do not intend to labour the legal position because you, sir, have a very much wider knowledge of the various cases than I could pretend to acquire in the time at my disposal, and I have no doubt they will be referred to throughout the hearing. Even when I come to the legal position, I do not intend to say much about that; but as I see it for the future, whatever the law may be at present, the duty is imposed upon your Commission, if I correctly interpret the terms of reference, to report all the facts which in the public interest should form the basis for applying taxation acts, and to make such recommendations for amendments as the Commission may consider to be in the public interest.

If that is the view ~~the~~ the Commission takes of its powers and duties under the terms of reference, then as to the past the matter is limited. As to whether it would be fair, as from today or tomorrow, to let the cooperative associations start business with the enormous reserves that have been piled up under the various headings in their reports, held over as patronage dividends or put to reserve, our submission in this regard would be that, the same as in any other business or corporation, they should pay, before



these are distributed, their fair and equitable share of the taxes necessary to carry on the country and the conduct of the war.

As to the future, whatever the law may be, whatever view the Commission may take of the law, my respectful submission is that some scheme should be suggested in order to make taxation fairer on a non-discriminatory basis for the future.

I point out that the reason these cooperatives were ever excluded from taxation must be sought for in their early history. Their history commences in Great Britain, and in the Appendix on page 32, I go into the growth and development of cooperative enterprises in the old land.

THE CHAIRMAN: We have already studied that feature extensively, Mr. Lipsett. We have read the English reports and also the report made by President Roosevelt through his committee, so that the history is pretty well established now.

MR. LIPSETT: I am merely pointing out where it can be found if it is considered desirable to look at it. It will be found on the pages beginning with page 32. The reason for the tax exemption in England was that the cooperative societies in the early days were corporations of working men generally who tried to get together as well as they could for the purpose of raising wages. They got together as cooperatives in order to make wages go as far as possible by buying cooperatively for themselves. They were later registered under the Industrial and Provident Societies Acts the last of which was passed in 1893. By reason of that they got the exemption which those societies enjoyed from the payment of income tax either in respect of profits under Schedule D or in connection





with investments and reserves under schedule C.

At all times in Britain they remained liable under Schedules A and B of the income tax forms in England, namely, in respect of ownership of property and occupancy of property. That was the position in connection with the cooperative societies and the matter was first brought to public attention in 1905. I have referred here to the report of the committee which sat in 1905, the Ritchie Committee, which on two grounds recommended that the societies should not be taxed. One of these grounds was that they were so small, and that they were to a large extent true cooperatives then, the other ground being that the difficulty of tax collection would be so great that the Treasury would really be a loser rather than a gainer if they were taxed.

Cooperative members at that time were nearly all workers and people of that class who paid no tax in any event. Of course, the Commission is well aware of the differences in Britain, in Canada, and in the United States respectively with respect to the payment of taxes. In Britain the tax is paid not by the corporation but by all members; in Canada and the United States the corporation is taxed. First there is payment by the corporation and then there is the tax on income, which is payable to the taxpayer when he makes his own return.

The revenue in England is protected by the fact that the corporation there first of all pays the tax on the money that it puts to reserve, and secondly it pays taxes on all dividends to be distributed. They are deducted, in other words, at the source, and the individual who is exempt from income tax then claims a refund.



In fact, however, as I understand it -- and I think it is still the law in England -- the entire profits of the corporation pay the tax. The individual shareholder or member pays the tax by having it deducted at the source. If he is a non-taxpayer he makes application and gets a refund.

That being the law in England, perhaps I can shorten my remarks by saying this. The Income Tax Act in Canada was passed in 1917 and it was very largely founded upon, and very largely copied from, the English Acts. I have noticed during my stay in Canada that as a rule where British legislation is considered good there is no feeling against the adoption of it; and on the other hand, when I see some change made in Canada in what has been either the law or the practice as I knew it in England, I always look into the circumstances to find out what is the very good reason why the Canadian Legislatures and people have made some alteration in that to which I had been accustomed. Generally I have found some very sound practical reason for the difference.

In passing this Act, the Canadian government largely copied the British statute and included the exemption of cooperative societies at that time, and of course, as we all know, the societies at that time were very largely true societies which were owned by small people who in those days would have been exempt from taxation. The matter was not very important in 1917.

MR. PARKER: Do I understand my learned friend to assert that the exemption of cooperatives was included in the original Act of 1917?

MR. LIPSETT: Interpreted in that way?



THE CHAIRMAN: Was it in 1933 that 4 (p) was included as part of the Income Tax Act?

MR. PARKER: 1930.

MR. LIPSETT: I was coming to that because in 1917, as I understood the Income Tax Act at that time, it was interpreted in the same way as the British provisions; it was under those circumstances that the British Commission of 1919-1920 held its inquiries.

I wish to deal only very briefly with that Commission and I would ask you to look at the lower part of page four. As to that Royal Commission in England, I have just referred shortly to the fact that it held fifty sittings and examined 187 witnesses whose evidence was reported in seven large volumes, and its report, which was dated March 11, 1920, covers over one hundred and forty large printed pages.

THE CHAIRMAN: Is that offered to us as a pattern that we should follow?

MR. LIPSETT: It may be a reminder to me, sir, that I should not be too loquacious. The recommendation will be found on page five.

THE CHAIRMAN: We have read that report.

MR. LIPSETT: It is to the effect that there should be no difference between ordinary businesses and co-operative societies. There is one part to which I want to call attention, although I am sure you have read it, and that is that twenty-two members signed that report, seven of whom made a reservation. I take it that those seven were people who came to the conclusion that co-operatives should be exempted from the then existing English income tax, but there was then no corporation tax in England such as exists in Canada or the United States.





Those seven, in their minority report, made this statement:

"If there were in the United Kingdom, as there is in the United States of America, a corporation tax levied specially on corporations as such, it would, no doubt, be proper that a cooperative society should, as a separate legal entity, be made liable to that tax. But the income tax is not a corporation tax."

So that as I read that report, there was a completely unanimous finding of that Commission -- not merely a majority report but a completely unanimous finding -- that if there had been a corporation tax in Britain, as there was then and is today in Canada and the United States, these cooperative associations, in their recommendation, should have paid the tax.

There is a further paragraph on page six that I would like to read. It is copied from the report, but I think it is important enough for me to risk troubling you once more. I quote:

"I have, however, been much impressed by the evidence of the growth of these societies, of the magnitude of their operations, and of their tendency to absorb business previously carried on by trading organizations whose liability to income tax is unquestionable. It is obvious that if this process is indefinitely continued the loss to the revenue will be very great, and that a corresponding increase must take place in the burden of other taxpayers. It is also clear that the present high rate of tax must tend to increase the advantage of the societies over private traders and manufacturers and so to accelerate the progress of their absorption or displacement.



I think that the very large trade carried on by cooperative societies ought to bear its due share of taxation, and that if the income tax is not a suitable instrument for that purpose then some fair and workable method of taxation should be devised to fit the circumstances of the case, and that the cooperative societies themselves should be consulted as to how this difficult subject can best be approached."

Nothing was done on that report, for various reasons that are not of interest here; and in the meantime the Canadian Act of 1930 was passed. While the position remained static in England, the 1930 Act in Canada put in the provision of 4 (p) exempting cooperatives from taxation.

The next step in point of time was the appointment of the English Departmental Committee of 1932.

MR. PARKER: I notice that on page four you refer to the decision in the Fraser Valley Milk Producers case. Do you suggest that the amendment was passed by reason of the decision in that case or is there any relation between the two?

MR. LIPSETT: I do not know that I would like to commit myself by saying that my impression was that it was really a reversal of that decision. Whether that was a case of cause and effect I would not say, but it was subsequent to that decision.

MR. PARKER: I wanted to know whether the inference was to be drawn that it was because of that decision.

MR. LIPSETT: My learned friend will agree with me that the effect of it was to reverse the decision. Whether the intention was to do that, or to deal more generally with the matter, I am not prepared to say. On the fact of





it, however, it would appear to me that it was properly the case of a definite decision of the government to reverse that decision of the Court. The fact was that in 1930, in England and in Canada, for various historical reasons, the law was exactly the same after 4 (p) was passed, and cooperatives in both countries were exempt from taxation.

In 1932 the English Departmental Committee was set up, and in the meantime, in these ten or twelve years, in England, there had been an enormous increase in the cooperative movement. Organizations like the Scottish cooperatives and the London Co-operative Wholesale had grown to vast proportions, and the matter was of course changing very gradually all the time. It is very much, in my submission, like the case which had a great deal of human interest, which your Commission heard about on the coast, in connection with the little fishing cooperative.

That was the origin of the matter in England, and to use that case as comparable, or in any way governing what should be done with the enormous cooperative organizations which are now built up in other parts of Canada, is exactly the same as what happened in England, where a few workers got together and set up a little cooperative, and comparing them with an organization like the Scottish Co-operative or the London Co-operative Wholesale.

However, the English Departmental Committee at that time went the whole way in recommending that all distinction between them should be abolished, and that a true trading profit does result from the trading of societies, both with members and with non-members.

It was on the strength of that report, and owing to



the enormous loss to the revenue and the increase in the discrimination against the independent traders and corporations in England, that the Finance Act of 1933 was passed which swept away all that distinction.

I have set out in Appendix C the various Acts, but unless that is challenged there is no need to trouble you with a reading of them.

Now, sir, I think I might pause to put this view to the Commission. We see, and I do not think there can be any doubt about it, that the origin of their exemption in Britain and the origin of their exemption in Canada was partly historical, by reason of the very small foundation from which the movement grew. However, I would like for a moment to put myself in this position of standing up before this Commission, or before any legislative assembly, out of the blue, today to argue or to submit an amendment in the law if cooperatives were now subject to taxation, and to ask that the law be altered so as to exempt them from taxation. I just do not know what argument I could put forward that would be acceptable or persuasive or logical or fair to ask any tribunal -- if today these cooperative organizations were paying a fair share of taxes -- to have the law so amended as to exempt these associations from taxation.

I know we have had a great many, I might say almost metaphysical arguments as to mutuality, and as to whether these surpluses that have been built up are true profits or not.

My submission, from the common sense point of view, from the retail merchants' point of view, or from the business point of view is that all that is simply an



endeavour to set up some sort of case so as to escape or not to be forced to pay their fair contribution to the taxation necessities of the country. If I might just turn to the middle of page seven, sir, I have set out in two appendices referred to there, D and E, extracts from the Canada Year Book of 1942, 1943 and 1944.

These are indicative of the extent of the increase that has taken place in cooperative business. In Appendix E there is set out a pamphlet, recently published, which I have no doubt will form a portion of the next Canada Year Book when it comes out. It is a continuation of the dealings of the cooperative movement and it has been brought up to date.

MR. WILLIOTT: We have that.

MR. LIPSETT: You have it in Appendix E. The figures are all there, and I shall be glad to go more fully into the matter if the Commission wishes. But what I have called attention to at the foot of page seven and page eight is, I think, a fair and accurate summary of the findings that are more fully set out in that Appendix.

The first table shows that between 1932 and 1943 the number of associations has increased from 795 to 1,675; that is, more than double. The business has increased from \$145,000,000 to \$352,000,000 in those eleven years -- again considerably more than double. The total assets have increased from about \$70,000,000 to almost \$188,000,000. The working capital -- and perhaps this is the most startling figure of the lot -- has increased from \$2,500,000 to about \$25,000,000.

MR. ARNASON: May I ask you a question there. When you were discussing these figures, which are official, I was wondering whether the conclusion which you want us to





draw from the figures is that there significance is related to the increase in the growth of cooperative business, or whether you think that these figures should be considered in relation to the increase in business which has taken place in Canada as a whole during this period. Because 1932 was a low point of business activity in the Dominion, and there has been a tremendous increase since that time, particularly during the war. What weight would you like us to attach to these two factors which I mention.

MR. LIPSETT: I think, sir, that is a very fair question to put to me. I would like to deal for a moment with Mr. Arnason's remarks. I think that possibly some weight should undoubtedly be given to the growth of general business in Canada, but I think it is very trifling by comparison with the enormous weight that I would ask the Commission to give to the discrimination which has put cooperatives in such a favoured position in contrast with their opponents or competitors.

In this table on page 53, which is one of those that I have referred to, I think I can say this fairly; that while all other business in Canada was in a very distressed condition during the years from 1932 to, say, 1937, the cooperative associations practically maintained their position in the bad times, and when there was any change at all -- take the year 1936 -- they made enormous strides, their business having gone up from a low of \$115,000,000 to \$158,000,000 in that year, which was still depressed.

MR. ARNASON: In that connection, in your earlier remarks you referred to the fact that cooperatives in Great Britain owed their origin to the depressed economic conditions that confronted certain people, certain classes



of people, and for that reason it was not considered necessary to tax those cooperatives. The point I wish to draw to your attention is this: Is it not a possibility that the increase in the number of cooperatives from 1932 to 1937, say, which as is well known was a period of considerable depression and hardship in Canada, may have originated from the same cause -- that is, the depressed conditions among the people? I do not wish to argue this point, but I was wondering whether you would explore that a little.

MR. LIPSETT: I do not know sir that I share the view you take of the reason for the commencement of the movement in Britain. It is true it was an organization of poor people; there is no doubt about that; but I do not think that the times when cooperation started in Britain, say from 1844 on, were times of depression over there. It was a time of great prosperity in the mid-Victorian period. But what started it in Britain was, as I see it, the desire of the working people generally, who were the poorer people -- poorer not by reason of depression necessarily, because at that time manufacturers were rapidly growing, and the country was quite rich and prosperous -- to receive perhaps a greater share of the prosperity that was abroad by getting their wages increased on the one hand through trade unions, and, on the other hand, by making those wages go further by buying through cooperatives as consumers.

I do not think, however, that it would be at all fair to say, and certainly it would not be my submission, that the origin of the cooperative movement in England had anything to do with a general depression in the country such as we have come through in Canada, and I do not think





I would accept a suggestion that any increase from 1932 to 1937 was due to depression in Canada.

I might answer that argument by asking you to consider the period from 1937 to 1943, when the depression was over, because in that period cooperatives increased from around 1,000 to well over 1,600, and turnover increased from \$174,000,000 to around \$353,000,000 or more than doubled.

So that that could not be said to be due to depression in Canada. Rather, it was due entirely to the fact that during that period, when taxation was increasing by leaps and bounds, the position of competitors, who were bearing very heavy burdens of taxation, was very unfavourable in comparison with that of the cooperatives. The difference was so great that the cooperatives, in the last six or seven years of great prosperity, increased considerably by reason of the tax discrimination in their favour.

At the beginning of page eight I have extracted a few figures from the tables, but unless the Commission wishes, I do not propose to do more than take the total increase from the tables, which are there for reference. This is the picture that shows the advance that has taken place in the movement, between 1942 and 1943, when that advance is almost 100 per cent by reason of the subsidy, if I may use the word, or the tax discrimination which has been given in the favourable existing legislation. The membership increased from 561,000 in 1942 to 585,000 in 1943. There is an increase of 24,000 inside twelve months, or an increase of 2,000 per month during that period. The total business had increased from \$257,000,000 in 1942 to \$352,000,000 in 1943. Reserves of surplus had increased from almost \$46,000,000 in 1942 to over \$49,000,000 in 1943.



Working capital had increased from under \$20,500,000 to over \$25,500,000 in 1943. There is an increase in working capital of 25 per cent inside twelve months. That 25 per cent, in my respectful submission to the Commission, is money that should be in the Federal Treasury at the present time instead of being used as working capital for expansion or for the wiping out of competitors. The sale of farm products had increased from \$244,000,000 to \$295,000,000 and the sale of supplies from \$42,000,000 to \$55,500,000.

I respectfully draw your attention to this, Mr. Arnason. There is an increase in one year of the kind I have indicated, not because of poor people trying to cooperate to save themselves; but in a year of the greatest prosperity a very strong business organization, developing throughout Canada, had taken the very fullest advantage of the fact that it contributed nothing at all to the necessities of the country, or to the war effort, during that period.

It seems to me that it is trifling with words when we begin to ask whether that is really profits or whether it belongs to John Jones or to Bill Smith, or somebody else, members of this organization. It is money that has been acquired by purchasing things at a certain sum and selling them at more than that sum, plus the cost of selling things at a certain price and selling at a higher price than cost price and expenses. And it has been put there into surplus funds.

Whether you call it profits or not, under present definitions, if it is not profits then my respectful submission would be that there should be a different definition of "profits" so as to make it quite clear that





that discrimination, both from the standpoint of competitive traders and having regard to the tremendous loss to the Federal Treasury, should be stopped immediately.

In the next table, E, I do not know that I should again do more than give the figures as I take them from that which I have set out at the foot of page eight. I shall be glad to discuss any figure that is shown, but we got the figures which I have extracted for the provinces of Saskatchewan and Alberta, and those show for the province of Saskatchewan 513 associations with a total business of over \$100,000,000 and total assets of over \$85,000,000, and for the province of Alberta 110 associations with a total business of over \$50,000,000 and total assets of over \$28,000,000.

I gather that these figures for Alberta were brought up to date by Mr. Fitzpatrick in his very interesting evidence, and at the present time they are a considerable understatement of the cooperative movement in Alberta.

I have not included other interesting facts in that Appendix, because I thought I was trespassing on the forbearance of the Commission in the length of the brief without doing so; but they also show the amount done by credit unions and mutual fire insurance companies, and the figures with reference to the mutual fire insurance companies is certainly startling.

At the end of 1942, as I set out at the foot of page eight, farmers' mutual fire insurance companies in Canada were holding a net amount of insurance of \$1,306,000,000. Those premiums are paid. The surplus does not pay any tax whatever. They compete with ordinary insurance corporations which, out of their revenue, that is to say the premiums paid by the policy holders, have to pay an enormous sum in corporation taxes and in income tax, whereas these mutual





societies pay nothing whatever; and to place them in comparison with the small societies or cooperative associations in Britain, which first set the precedent of escaping taxation, is really in my submission not facing the true position and the facts as they exist today.

In the next section, from page nine to page twelve, I have set out -- subject to considerable inaccuracies, although I have done the best I could -- a short historical sketch of the movement in Saskatchewan. You will get that more fully from some of the other briefs, and that being so I will leave it with the Commission as it stands, unless you want me to read it. The part to which I would draw attention is at the foot of page nine, where I have set out a table. This is from the agricultural annual report of 1943, from which it will be seen that during the period from 1938 to 1942 the number of associations which reported had increased from 445 to 674, that the paid-up capital had increased more than 50 per cent, that assets had considerably more than doubled, that total sales had almost trebled, and that net surplus had considerably more than doubled.

Perhaps I should say, sir, on reading that report which I have dealt with, that I was greatly interested in and very appreciative of the clarity with which that report from the Economics Division of the Department of Agriculture in Saskatchewan, and the Co-operative Associations Branch in Saskatchewan had been compiled. I think it is a document that reflects credit upon the government. Both documents reflect great credit on this government for the compilation of the facts, and the putting together of the comprehensive data included. I mean every word of that.



On page ten I refer to the tables in that report and the first paragraph in table 1, with reference to co-operative marketing associations, will show that in the year 1942-43 as compared with 1941-42 they had increased their total assets from under \$50,000,000 to over \$79,000,000 and their total business from under \$50,000,000 to over \$86,000,000.

Looking at these figures, I would ask this question: What has enabled all this to be accomplished, under ordinary competitive business conditions, except tax discrimination? What difference was there that would enable that progress to be made by this tax-free organization? When I come to deal shortly with the increases in taxation, it will be seen how much the discrimination has increased in the war years by reason of the heavy taxation borne by other people. I throw out the suggestion as worthy of the consideration of this Commission, as to what other reason, except this tax discrimination, can be put forward by these non-taxpaying organizations to account for that increase of over 50 per cent in the one year in their business activities.

In the next paragraph I refer to the increase in co-operative stores, which is a matter that my clients as retailers are chiefly interested in. May I quote the following from page ten:

"In this connection the annual report for 1943 shows that the number of cooperative stores increased from 56 in 1941 to 70 in 1942; that in addition to these there were large numbers of bulk trading associations operating general stores and hardware departments, and numbers of bulk trading organizations handling chiefly bulk commodities.

"The Report shows that the business of retail purchasing associations in Saskatchewan, had increased from





around \$8½ million in 1941 to almost \$11¼ in 1942; and that their net reserves had increased from somewhat over \$1½ million in 1941 to over \$2 million in 1942."

That is notwithstanding the paragraph which I quote at the end of page ten from the report, which states:

"The volume of business transacted by retail purchasing associations increased by more than two and a half million dollars during the year ending April, 1943. This increase took place notwithstanding a growing shortage of supplies of various kinds, a shortage of personnel and government restrictions respecting the establishment of new retail outlets. For example, no new associations for retailing petroleum products were organized during the year. On the other hand, a number of retail cooperatives expanded their operations under permit from the Wartime Prices and Trade Board through the purchase of retail stores. This represented healthy expansion on the whole as it did not result in any duplication of activities and was undertaken in many instances for the purpose of maintaining adequate retail services for the community concerned. As a matter of fact, the restrictions in the establishment of new retail outlets, which were made necessary due to war conditions, have given retail cooperative associations an opportunity of consolidating their financial position and to accumulate reserves necessary for post-war expansion. The prospects for future developments of cooperative retail purchasing appear promising."

It shows that the war had put the cooperatives in a stronger position to accumulate reserves and get ready for post-war competition; and the only reason that occurs to me for their being in that favourable position is the fact that all their competitors were contributing to the war



effort while they had paid nothing either to the war effort or to the necessities of the country. I quote the next paragraph:

"Four new cooperative purchasing associations were organized during the year.

"Table XI in this report (an extract of which is set out in Appendix F), shows that the number of cooperative organizations in Saskatchewan increased from 768 in 1942 to 802 in 1943; and that the total business had increased from under \$64 $\frac{1}{2}$  million in 1942 to over \$105 million in 1943."

Perhaps that is the most startling figure from the whole report. There is an increase in the business in one year, by reason of the tax exemption discrimination, from \$64,500,000 in 1942 to \$105,000,000 in 1943. I would refer the Commission to the last paragraph on page eleven:

"The report states that closer trade relations were also developed with United States cooperatives, this involving in some instances, investments in United States cooperative enterprises by Saskatchewan organizations. It was expected that Canadian Co-operative Implements Limited would ultimately enter actively into the business of manufacturing farm implements and machinery. Other activities included cooperatives for the production and marketing of sheep; a Co-operative Superannuation Society; a Co-operative Fidelity and Guarantee Company Ltd. to provide bonding services for officials of cooperative organizations; proposals for application of cooperative principles for providing medical and hospital services low cost insurance, community halls, cooperative education





and credit unions, with discussions taking place with credit union officials in other provinces with regard to the establishing of a national association of credit unions for Canada."

In other words, the expansion which I have dealt with is nothing compared to the expected expansion which is going to take place as indicated in that paragraph -- expansion in all directions, amalgamations in cooperation with cooperative societies in the United States, and so on. The net result, I respectfully submit, is that private concerns will not be able to stay in business. As Mr. Fitzpatrick pointed out yesterday, if a man wanted to sell his business there was no suggestion that he rent to anyone else but a cooperative; and they can buy out at 50 per cent or 100 per cent over the value to any other trader because of the fact that once they get the business, if they have a profit of \$100,000, instead of \$50,000 going into taxation, they will have the \$100,000; whereas their opponent has only \$50,000. In other words, they will have \$100,000 to play with and buy the next man out, thus increasing their competitive position.

On the next page, twelve, I draw attention to the address of Mr. I. H. Hull, Manager of the Indiana Farm Bureau of Indianapolis, Indiana, who emphasized the need of giving the utmost support to the war effort. That was published in connection with the annual meeting of the co-operative movement of Canada, and apparently it was received with approval there. I would ask that Mr. Hull's suggestion be implemented. In this war effort every organization in Canada should pull its full weight, and these organizations are pulling none of the weight. The comparable funds which their competitors are paying to help the war effort they are





putting into reserve funds in order to wipe out their competitors.

In the next section I deal with Alberta more particularly, and you have already heard from Mr. Fitzpatrick about the various Acts which are in operation in this province -- the Co-operative Associations Act, the Co-operative Marketing Associations Act, and the Frozen Food Locker Act.

The membership in the organization is not confined to people who in the ordinary sense of the word become members. As to the composition of the membership, I would refer you to the following paragraphs on page fourteen:

"1. Persons who are engaged in the production or marketing of any agricultural product or fish to be handled by the society, or who are the tenants of the land used for the production of any such product, and persons who are landlords and who receive as rent, all or any part of any such product grown upon land leased by them.

"2. By special by-law, persons who are consumers of any such agricultural product. This provision enables the membership to be indefinitely extended so that the association is no longer a cooperative as defined by the Rochdale principles."

That is to say, in the first place, practically every person who owns land in the province can be made a member within the foregoing rules; and secondly, according to the special by-law, which I have no doubt was passed without difficulty, if I go into a retail store and buy a pound of potatoes I am a member of the organization, and whatever profits they make go into a surplus fund and escape taxation. And the provision enables the membership to be indefinitely extended, so that the association is no longer



a cooperative in accordance with the Rochdale principles

I refer shortly to the Supervision Act and the Co-operative Marketing Associations Guarantee Act under which, as Mr. Fitzpatrick pointed out to the Commission, he has almost unlimited powers to set up an organization which will be exempted ipso facto from all liabilities for Dominion taxation and which can take over any taxpaying retailer who can be forced by circumstances out of business for the simple reason that he cannot possibly compete.

I have called attention also to the provisions preventing any other cooperative association from setting up within a five-mile radius and competing, notwithstanding that there is no protection at all for the retail merchant. He has got to face that competition from any cooperative which may be set up in the building next to him.

I do not think I need trouble you further with anything in that connection because you have already received from Mr. Fitzpatrick the record which I have set out in Appendix G, which is before you in full. I will not refer to it further.

MR. ARNASON: In connection with Appendix G, at page 61, perhaps you will answer a question. It shows the increase which has taken place in the number of cooperative retail stores in Alberta. The number of retail stores has increased from 56 in 1941 to 73 in 1943. Just digressing for a moment, have you any information regarding the total number of retail stores in this province?

MR. LIPSETT: I may say at once, without giving the exact number, that I will try to get it if Mr. McKay has it, but it runs into many thousands. I will say further that this elimination of the retailer is a tendency which is in its infancy at the moment. These Acts have been





recently passed and are only just now commencing to show the effect which they will have. These stores increased from 56 to 73. That 73 was part of the figure given for 1943 of 186 units.

If I understood Mr. Fitzpatrick's evidence correctly, that 186 had increased to 244 at the end of 1944. So that there is an even larger increase, if I got the evidence correctly.

MR. ARNASON: Following that further, if I may. Have you any information which would show the number of sales that have been made with respect to transfers of retail business establishments from one person to another during the past year?

MR. LIPSETT: I will ask Mr. McKay to take a note of that and get the information for the Commission. I am not sure that I can get it. I did not come across anything in any official document to which I had access, but I concede at once that the taking over of these retail merchants is only just beginning now, and you can see the possibilities. If ten men in a village can set up a tax-free opposition store which will sell to anybody, the ordinary taxpaying merchant who is within the taxpaying limits has not a chance to survive over any extended period.

MR. ARNASON: I raise the question because I am under the impression that owing to increased business activity which has taken place in the past three years there has been a considerable transfer of stores. A very considerable number of stores have been sold by former owners to new purchasers, not necessarily cooperatives.

MR. LIPSETT: From my own practice I know of cases where stores have been sold to other individuals. I think I am correct in saying that, without pointing to any particular



instance where that was done. I think the movement of cooperatives taking over stores in this province is just in its infancy, just commencing. Mr. MacKay, who is instructing me, tells me -- I do not know whether it is an answer to your question -- that there is practically no incentive on the part of one man to take over a business from another because they cannot get any additional quotas. I am not sure that I make myself clear, but I understand that the war-time restrictions put a stop to the transfer or opening of additional stores by any person, and the way to get a business is to buy an existing store. Then you get up against what I have been trying to indicate, namely, that the cooperative organization can outbid anyone else in obtaining existing stores, because it can go into business then knowing that the 20, 30 or 50 per cent of profits which the private trader had to pay to the government is entirely wiped out once the cooperative takes over the store.

I do not know how much interest there is in the small summary which I have put in with reference to cooperation in the United States.

THE CHAIRMAN: I think you can leave that to us. We will certainly make that comparison.

MR. LIPSETT: If you will, sir. I have taken extracts from the press and other sources which I have been able to find myself.

I would refer you to page eighteen, which you have no doubt looked at. I call your attention to it as an illustration of what is happening in the United States in the case of a small grain company. It had a profit of \$23,000 and paid \$12,000 in taxes. They were feeling the



pinch of cooperative competition and the directors sent out a circular to the shareholders. I do not know what the result was, but I got a copy of the circular in which they said that they would give their present members, in lieu of each \$50.00 share, five shares each worth \$50.00, or a total of \$250. paying 3 per cent instead of the 15 per cent dividend which had been paid previously. This, I gathered, was to bring them within the limit allowed cooperatives. They then suggested making it a cooperative, and the effect will be that half their profits of \$12,000 out of \$23,000 will go into the reserve and be free from taxation, and they say that with that advantage they can develop their organization into something extraordinary. They get all their profits as before and they have \$12,000 of what should go to the United States' government for taxes, but they increase their own business at the expense of tax-paying competitors. If it were not for the possibilities of what might develop from this Commission, I suggest that if I were advising a grain elevator company tomorrow, or a large trader, I might say to them, "If you want to escape taxation -- though it would not be a laudable object -- the only way to do it is to reorganize your elevator company or retail business as a cooperative." But what the result of that might be to the revenues of the country I do not quite know.

THE CHAIRMAN: That might be of great interest to Counsel sitting behind you, Mr. Lipsett.

MR. LIPSETT: I would not attempt to advise my learned friends on a subject of which they know much more than I do, but it does seem a possibility if this tendency is allowed to go on that you might have, in the United States or in Canada,





a cooperative state or province in which every bit of business would ultimately have to be done by cooperatives, and under circumstances which indicate that there might be some difficulty in raising the necessary revenues to support government.

I refer you now to page twenty, but I do not intend to trouble you with reading it. I know you have a thorough knowledge of it. I refer to the resolutions of the United Nations Conference held in June, 1943, which resolutions show the importance of the taxation question, and how important it is that discrimination should be done away with, because it is obvious that the future of the cooperative movement is all in the direction of enormous expansion.

Coming to the next section dealing with the Canadian taxation law today, I do not intend to deal with that at all, because all that will be before you in many other cases. There is just one thing, however, I would touch upon. I wish to make a correction in one respect to which my attention has been called by one of the gentlemen interested on the other side. I refer at the top of page twenty-three, to the case of Saskatchewan Co-operative Wheat Producers Ltd. against Zurowski. It has no reference to this taxation problem at all.

THE CHAIRMAN: That is to be omitted?

MR. LIPSETT: Yes; and there is a case I have omitted which should be referred to, namely, the Minister of National Revenue against Saskatchewan Co-operative Wheat Producers Limited reported 1930 Supreme Court Reports page 402.

I would like to read the comments on page twenty-four because they are descriptive of the activities of my



clients in this province and the part they played during the depression;

"Retail merchants deserve sympathetic consideration from the public they have served so well. In the years of the depression, from 1930 to 1935 or 1936, when banks and other financial institutions found it impossible to extend credit, the farmer had no alternative but to throw himself upon the generosity of the local retail merchant. As a result of the continuance of the depression the merchant gradually exhausted his own resources and later his credit with his wholesalers. Under these circumstances the Association made a survey throughout the province of the position of these retail merchants at the request of the provincial government and a brief was presented to the government in 1932 which showed, following receipt of a confidential questionnaire from the trade generally, that at that time over \$40,000,000 of credit had been extended by the merchants and appeared on their books as outstanding debts due by the farmers and other customers who had been dealing at these local stores.

"The retail merchants have given useful public service and their extermination by means of discriminating taxation will be most unjust to them as a class, and might become a public calamity."

That part of my brief I got from Mr. MacKay and I will ask him to confirm it when I put him in the box.

In the next part of the brief, which begins at page twenty-five, I deal with the discriminatory taxation against taxpaying businesses and its effect on retail merchants generally. It is the last section that I deal with, and as I think possibly I am still within my time,





if it meets with your approval I would like to read that part and put it to the Commission. It reads:

"When the Canadian Income War Tax Act was originally passed in 1917, the tax imposed was only 4 per cent with a super tax of 2 per cent on larger incomes. Consequently the exemption of cooperative organizations did not impose a large discriminatory burden on other businesses. Similarly, when the Corporation Tax was first passed in 1918 it was only 6 per cent and in the year 1930, when the Income War Tax Act was passed it was only 8 per cent. Now that income tax has gradually been stepped up to its present basis, and now that corporation tax has been increased from the 8 per cent basis to something between 40 per cent and 80 per cent of business profits, present-day discrimination between private business and incorporated trading companies on the one hand, and tax-free business concerns obtaining relief under the cloak of cooperative association, has become little short of a public scandal.

"The evasion of taxation by trading cooperative organizations under the patronage dividend schemes at present in force, emphasizes this discrimination and more especially so when it is realized that the competing incorporated company is prevented from paying patronage dividends by Section 498A of the Criminal Code."

MR. PARKER: Did my learned friend intend to use the word "evasion" there? He uses it deliberately and it seems a strong word to go into the record.

MR. LIPSETT: I certainly do not want an argument over a word; a neutral word would be "avoidance".

MR. PARKER: I wanted to know what you meant; that was all.



MR. LIPSETT: I did not use it in any critical sense because the general rule that every lawyer adopts is this. If I could avoid or evade the payment of taxes in ordinary times by reason of the wording of a statute I would be justified in so advising a client if the wording of the statute made it possible. However, "non-payment of taxes" would be neutral. I do not intend to reflect on anyone. Continuing:

"These patronage dividends are not, in any sense of the word, a return of surplus to members in any sense which should exempt cooperative associations. They are surpluses only nominally ear-marked for the benefit of members, which are held in the coffers of the cooperative organizations for years after they have been earned. In this way they provide the capital necessary to enable the cooperative organizations to compete with and eventually to ruin the taxpaying competitor. The cooperative organization may start on a shoe-string and by neither paying income tax on its profit or surplus at the year end, nor returning such profit or surplus to its members, may provide itself with the necessary capital, to increase its operations and expand into many new fields. All this is done with money which should be used to pay taxes similar to taxes paid by the competing business, or should at the end of the year be returned to the members who provided the surplus and who in turn should account for it in their income tax returns. Instead of adopting either course the cooperative treats the surplus as if it were capital belonging to the cooperative association and retains it for as long a period as that capital may be required for its business purposes and expansion.

"In a case brought by Robert Barnes of Winnipeg,



against Sask. Co-operative Producers Limited, Mr. Justice Bigelow handed down a judgment as appears by a report in the Calgary Herald of January 18, 1945, in which that corporation set up the defence that deductions from growers for commercial reserve of over \$6 $\frac{1}{2}$  million and elevator deductions of over \$12 million, did not have to be repaid. The figures showed, according to the report, that over \$10 million of patronage dividends had been deducted from profits between 1939 and 1944 and the Society claimed this surplus did not have to be paid out to the members whose payments had produced those profits, but could be held by the society without payment of any interest, unless or until there was a dissolution of the Company."

I understand the contention of the cooperative was that they were entitled to hold both the capital investment money they had got and the patronage dividends. I have to thank my learned friend Mr. Milliken for a correction which I gladly make, and that is to the effect that the contention of the cooperative was that they could retain the money paid to them as capital investment but could not and did not claim the right to retain the patronage dividend. That is an error I made and I would like to correct it.

MR. MILLIKEN: Patronage dividends were not really involved in the lawsuit. That might be a better way to put it.

MR. LIPSETT: Thank you for the correction. I did it hurriedly at the last minute, and it is hard to get the exact point of a case from a condensed report that appears in the papers. I do not make any observations about that case because it will be reported fully before you consider your report in this matter. Continuing:





"While the judgment of the Court was against this contention, of the cooperative organization, the Defendant's attitude, which presumably reflects the attitude of cooperative organizations generally, seems to have been that the association is a separate legal entity, and is entitled to hold the so-called patronage dividends indefinitely, and use them for business expansion or working capital.

"On that contention there can be no reasonable doubt that the Association, in its capacity of a separate legal entity, secures a large benefit from the use of such profits or surplus and its claim that such profits should not be subject to taxation becomes entirely unsustainable.

"How serious is the effect of this discrimination on ordinary traders and commercial corporations, and how much greater the burden of the discrimination has become in recent years can be easily seen by observing the increase in income tax payments which has recently taken place. In the year 1939-1940 some \$134 million was paid by Canadians for income tax but for the year 1943-44 income tax payments had increased to \$1,620 million.

"The Business Year Book for 1944 sets out a compilation of taxes paid by various Canadian companies. Taxation figures relating to 127 Canadian companies showed an increase of 330 per cent over their pre-war tax figures while during the same period profits were up only 2.6 per cent. These companies represent a cross-section of industrial organizations throughout Canada. One section of the companies included, has reference to merchandising and includes nine extensive companies operating in various parts of Canada. For these merchandising companies the



taxes paid in the four years, 1939 to 1942, both inclusive, are as follows:

1939	....	\$ 966,000
1940	....	1,979,000
1941	....	3,214,000
1942	....	7,250,000

"Although these figures only tell the tale down to the year 1942, it will be seen that the tax increases in the case of merchandising firms is over 600 per cent, or almost double the tax increases payable by industrial concerns as a whole."

My clients are interested in merchandising, and the figures for merchandising as given here are quite interesting. Continuing:

"There is no reason to suppose that the increased taxation which is being borne by the larger merchandising firms above dealt with, differs appreciably from the increased taxation borne by the Retail Merchants of the province of Alberta. If the above assumption is correct, then present-day tax discrimination as between the Alberta retailer and his cooperative competitor hits such retail trader much more severely now than in pre-war years when the tax burden was comparatively light. The competitive position of the retail trader becomes worse and worse as the weight of taxation imposed upon him, yearly grows more and more severe. In comparison with his cooperative competitor, who remains immune from the tax burden, his position is gradually becoming very critical and may soon become desperate as cooperative retailing expands."

I next give two instances which I took from an address of my learned friend, Mr. Thorvaldson. I am not in a position to prove the figures, although I have no doubt





they are correct, but I put them in as my argument:

Continuing:

"Two outstanding instances of tax discrimination were referred to in a recent address given by Mr. G. S. Thorvaldson, K. C., which was given wide publicity in the public press. He stated that one western cooperative association showed earnings of \$4.27 million for the year ending July 31, 1943, all of which was free from income tax and excess profits tax, while if the same earnings had accrued to an ordinary incorporated company, such company would have paid over \$3,500,000 for income and excess profits tax, and would have been left with only about \$750,000 for distribution amongst the owners of the concern as well as to provide for reserves and funds for any desired expansion."

THE CHAIRMAN: Aren't you stealing Mr. Thorvaldson's thunder?

MR. LIPSETT: He himself was good enough to come and give these figures in Calgary before the Commission sat.

MR. PARKER: We can assure them both that we have already read it with a great deal of interest.

MR. LIPSETT: I felt I should express my indebtedness to my learned friend for the figures because they were not my own. I will not trouble you further with the figures. You have two cases where one pays an enormous sum in taxation, \$3,500,000, and the other pays nothing. Mr. Thorvaldson also deals with the position of the Montreal Light, Heat and Power Company. I also mention the fact that tax exemptions at present result in a loss of at least \$100,000,000 to the Federal Treasury. Then, in the third paragraph on page twenty-eight I say:



"The attitude of wheat and crop handling associations differs considerably. In one instance it has been intimated strongly that if trading corporations engaged in handling the wheat and other crops of Canadian farmers succeed in forcing cooperative associations to pay income and excess profits tax, then such associations in turn will cut down the handling charges for grain to a point where no profits can be made and that by so doing the profits of trading corporations will also be eliminated, if in fact such concerns would not be put out of business.

"This attitude, aimed at avoiding taxation payments in the midst of a Great War is certainly not a very loyal or laudable one. IT IS SUBMITTED that it is equally unsound from a business point of view,

"If the cooperative associations had handled farm products merely on a basis of cost they would never have been able to obtain the enormous reserves accumulated from profits and now used as working capital and for expansion purposes. The only difference in the power of competition between cooperative organizations and trade corporations is that the trade corporations have had to find at the outset and at market rates of interest the capital necessary for their operations and have had to pay their share of income tax and excess profits duty on all their profits from the start, while the cooperative associations have carried on and enlarged their operations out of profits, or as they are sometimes called, surpluses, which it is claimed by them do not really belong to the cooperative associations but to their patrons. In this case they should it is submitted have been immediately returned to the patrons of the organization at the end of the season's trading, failing which they should have become liable to tax as retained reserves.





"The cooperatives claim to retain such profits for business purposes, but claim them as the property of patrons, so as to secure tax exemptions.

"As distinct from that attitude, which seems deserving of considerable censure, favourable attention is drawn to a statement in the 1943 Annual Report of United Grain Growers Limited. The accounts show that in the years 1942, 1943 and 1944 some \$2,000,000 have been set aside before profits were arrived at for patronage dividends, pending the decision as to that corporation's liability to income and excess profits tax. It was stated that if the organization was liable to tax, some 85 per cent of that \$2,000,000 would be payable to the federal government for taxes. Notwithstanding the possibility of that result the Directors' Report both for the years 1943 and 1944 stated that the Company, so far from resisting taxation properly applicable to the Company's business, was simply awaiting final decision as to what taxes were payable under the laws of Canada, as they now stand. The report then goes on to say:

"In dealing with this matter the Board of Directors has been governed by two principles which have been stated in previous annual reports. In the first place the Company fully recognizes the duty and obligation of every individual and institution in the country to pay such taxes as may be required and imposed, and most especially in wartime. That is an attitude which the Board of Directors feels sure is shared by every member-customer of this Company. The importance of the principle is emphasized, so far as farmers are concerned, by the increasing weight of income taxation to which they as individuals are now subject. On the other hand, the principle of equality of treatment must be maintained, and full recognition accorded to the fact





that this Company and its member-customers are fully entitled to take advantage of any tax exemptions which may be accorded by the government and the parliament of Canada in respect to the earnings and payments of any cooperative institution."

I quote that with considerable approval, if I may say so, as the considered pronouncement of one of the largest farmers' organizations in western Canada.

MR. STEER: I am acting for the United Grain Growers, and while we appreciate the kindly references which my friend has made, we still feel that it is always dangerous to take quotations out of their context. I will ask my learned friend to put before the Commission the full text of the statement which he has quoted. I have the reports here, and while perhaps the quotation gives the exact meaning, it may be open to some slight misinterpretation. The text is found in the section dealing with patronage dividends. In the 1943 report it is found on page thirteen and in the 1944 report on pages fifteen and sixteen. With the Commission's approval, I would ask my learned friend to put those in so that the passage will be read in its proper context.

THE CHAIRMAN: I am sure Mr. Lipsett has no objection to that.

MR. LIPSETT: I would be glad to put in five copies of the annual report of United Grain Growers for 1943 and five copies of the annual report for the year 1944. I gladly put those in, sir, at the request of my learned friend, and I do so all the more agreeably as I have the highest respect for the company which he represents. I have had an opportunity personally of observing its activities throughout western Canada, right here in this



province and down east as far as Winnipeg, and I have had the honour and pleasure of meeting and knowing a number of its directors and other officials and I have no hesitation in saying that from the point of view of the provinces concerned, and the farmers, the United Grain Growers is efficient and has done admirable work. I do not know whether there is any particular part of the report which my learned friend would like me to refer to.

THE CHAIRMAN: No, thank you, Mr. Lipsett. We have the report.

MR. LIPSETT: On page thirty I go on to say:

"The question at once arises, how can an organization such as the above, pay the foregoing large sum for federal taxation if it has to compete against a somewhat similar organization earning approximately the same amount, which is permitted by the government of the Dominion to escape all taxation.

"For the retail merchant of Alberta the picture is indeed a gloomy one. While legislation already referred to has prevented tax-free cooperatives from competing within a five-mile radius of each other, indiscriminate competition is permitted against the individual retail trader who is struggling to pay the heavy taxation from which his competitor is free.

"The result is that he is faced with the alternative of either selling out to the local cooperative store or being ruined by it, through the unfair competition created by tax exemption.

"As indicative of what is in store both for the retail merchant and for the federal revenues, attention is directed to the records of Wartime Prices and Trade Board which





disclose that during the first six months of 1944, 171 retail stores in Saskatchewan were converted from tax-paying ownership into non-taxed cooperative associations.

"These results, disastrous to the liquidated merchants, will also entail serious losses to provincial revenues if provincial income taxation again comes into effect at the termination of the war.

"Unless this taxation is promptly placed upon a fair and equitable basis the Dominion of Canada will gradually find itself providing opportunity and protection for thousands of tax exempted organizations, and may seek in vain for the revenue it requires from the business corporations and individual merchants and traders whom it has complacently watched being gradually ruined and eliminated.

"This was realized in England some twelve months ago when in 1933 the taxation of cooperative associations was placed on the same basis as profit-earning organizations irrespective of whether the cooperative trade took place with its members or with outside patrons.

"If this equality is to be brought about in Canada, IT IS RESPECTFULLY SUBMITTED that this Commission in addition to any recommendation it may make as to the applicability of present income and excess profits tax laws to past earnings, should as regards the future, recommend the repeal of any exemptions which favour one type of business organization as against another and should recommend the taxation of surpluses, patronage dividends, and profits so that all businesses should pay their fair proportion of income and excess profits taxes and that the distinction between corporations and cooperative associations as to patronage dividends under the Criminal Code should be done away with; AND FURTHER should recommend that all



accounting methods such as the setting aside of patronage dividends before declaring surpluses or profits, should be made illegal.

"IT IS SUBMITTED that only by legislation along these lines can the burden of taxation be equitably imposed and the strong and wealthy cooperative associations now in existence be compelled to contribute their fair share to the taxation necessities of the country.

"Respectfully submitted on behalf of The Alberta Provincial Board of the Retail Merchants' Association of Canada, Inc."

Documents filed with brief:

- (a) Appendix A - The Growth and Development of Co-operative Enterprises in Great Britain.
- (b) Appendix B - Extracts from Report dated 11th March, 1920, of English Royal Commission on Income Tax
- (c) Appendix C - The British Finance Act
- (d) Appendix D - The Growth and Development of Co-operative Enterprises in Canada up to 1942.
- (e) Appendix E - Co-operation in Canada, 1943.
- (f) Table 1 - Summary of Annual Statements of numbers, membership and business of cooperative business organizations in Canada, 1932 to 1943.
- (g) Table 2 - Summary of Annual Balance Sheets and Financial Condition of Co-operative Business Organizations in Canada, 1932 to 1943.
- (h) Table 3 - Products marketed, merchandise and supplies handled by cooperative business organizations in Canada, crop year ended July 31, 1943.
- (i) Table 4 - Cooperative business organizations by provinces, crop year ended July 31, 1943.
- (j) Table 5 - Financial structure of cooperative business organizations by provinces, crop year ended July 31, 1943.



- (k) Appendix F - Financial results of all cooperative associations in Saskatchewan (Table 6)
- (l) Appendix G - Cooperative business organizations in Alberta & Financial structure of cooperative businesses in Alberta
- (m) Appendix H - Internal Revenue Code
- (n) Copies Annual Reports (1943 and 1944) United Grain Growers Limited.  
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The question of escape from taxation is one that deserves considerable attention on the part of the governments of these provinces, presuming as I do that they may again become leviers of income tax after the close of the war. If the present movement goes on, however, the revenues of the provinces may be seriously depleted by the exemption of cooperatives from taxation. The movement has gone further in Saskatchewan than in any other province, and it may be a serious question for consideration by the government of the province.

MR. PARKER: My learned friend has referred to the records of the Wartime Prices and Trade Board. Can he give me the name of any publication in connection with the Board?

MR. LIPSETT: I shall be glad to hand it to my learned friend. I do not propose to deal further with any of the Appendices which are all before the Commission. That finishes my submission, so far as I am concerned, but I would call Mr. MacKay formally and put a question or two to him.

MR. PARKER: This is not examination, of course, but would my learned friend indicate whether his clients are recommending that, whatever changes may be made, they should be retroactive so that all past surpluses should become taxable, bearing in mind the considerable upset in





business which would result therefrom? What would be the idea of his clients in that regard.

MR. LIPSETT: I do not know that I can give much assistance to the Commission in that connection, but I gather from the report of the United Grain Growers, and it is common knowledge, that claims are made by the taxation authorities which would indicate that these patronage dividends, which the taxation claim is made against, should be included and made taxable. I do not feel that I should go further than that and say it is understood that the taxation authorities are claiming excess profits. If it is feasible, I think it is proper, because otherwise the cooperative organizations have been put in a position, as regards their competitors, which they would not have occupied if they had contributed a fair share of taxation in the past. Beyond that I would not say anything to the Commission, because by the time you get the general picture you will be much better able to consider the matter than you can in consequence of any observation I might make now without due consideration.

MR. THORVALDSON: Before Mr. Lipsett concludes, since he has quoted me, I would like to make a slight correction, not in figures but at the bottom of page twenty-seven where he says: "The other example given compared the earnings of a joint stock insurance company which, with about \$5,500,000 of profits, had paid over \$2 $\frac{1}{2}$  million in income tax and excess profits tax." The figures are correct; they are taken from a publication of the Department of Insurance at Ottawa; but it should not be "of a joint stock insurance company" but "of all joint stock insurance companies." Similarly, not "with a mutual insurance company" but "with all mutual insurance companies."



MR. LIPSETT: I respectfully accept that.

A. C. MacKAY,

Provincial Secretary,  
Alberta Provincial Board of the  
Retail Merchants Association of  
Canada Inc., having been duly  
sworn testified as follows:

BY MR. LIPSETT:

Q. Your name is A. C. MacKay? A. Alexander Cameron, yes.

Q. What position do you occupy in connection with the Retail Merchants Association? A. I am provincial secretary.

Q. For the province of Alberta? A. Yes.

Q. What I have said on pages one and two of the brief as to your organization is correct, Mr. MacKay?  
A. Yes.

Q. On page twenty-four of the brief I give particulars of facts which I received from you. Are they to the best of your knowledge correct? A. Correct.

Q. And with regard to the rest of the brief, Mr. MacKay, speaking generally so far as it deals with facts, have those facts been obtained from the best available sources and are they true and correct to the best of your opinion and belief? A. To the best of my knowledge and belief they are true.

BY MR. PARKER:

Q. On the first page of the brief these words appear: "With a view to getting a wide expression of opinion from the retail merchants for the information of the Commission, a questionnaire was circulated to several thousand retail merchants throughout the province and although the time has been short, many hundreds of replies have so far been received." How many circulars were sent?





A. Approximately five thousand.

Q. Did you send them out? A. Yes.

Q. From your office? A. Yes.

Q. How many replies did you get? A. Six hundred and seventy five. They went out two weeks ago and forty-two came in this morning.

Q. Six hundred and seventy five out of five thousand? A. Yes.

Q. In the next paragraph you say: "The unanimous expression of opinion contained in all replies is to the effect that it is becoming increasingly difficult and almost impossible for the retail merchants to continue in business and pay their current taxes, and at the same time compete with cooperatives and similar societies who are now exempt from taxation." Are the replies all the same? A. Yes. The questionnaire reads: "I believe that consumer cooperatives should pay income tax, excess profits tax and all other taxes on the same basis as independent business concerns and that they should not be given any concession or special privilege by provincial or federal law giving them unjust advantages over the independent retail merchant."

Q. It was a statement that was sent out? It was a prepared statement sent out with a sort of invitation for them to sign and return? A. There was a bulletin attached stating that the Association was about to present a brief and we wanted their opinion as to whether they were in favour of the Association's action in presenting the brief and also in bringing to the attention of the Commission the desirability of equality of taxation.

MR. LIPSETT: You will want about ten copies?



THE CHAIRMAN: Will that be part of the brief or will it be an exhibit?

MR. LIPSETT: Part of the brief.

THE WITNESS: While I am here, might I add a word to what has been said by our solicitor.

THE CHAIRMAN: As argument, no; as fact, yes. Counsel has argued your case thoroughly and I do not think further argument is required. If you have facts to state we should be glad to hear them.

THE WITNESS: The fact is that in addition to the taking over of stores now in the possession and owned by independent retailers, one case came to our attention where for sixteen years a merchant had rented certain premises and he was very politely told by the landlord that he would have the option now of buying the premises; otherwise there would be no alternative but he would have to get out, that the cooperative was taking over the premises. We feel as an association representing the independent retailer that the independent merchant is placed in a very embarrassing and unhappy position, when, after years of service, he is confronted with a proposition of that kind. Many of our members in the last two years, in spite of war time regulations, have disposed of their business to cooperatives at varying figures.

BY MR. PARKER:

Q. Is it not also within your knowledge that many of your members have sold out their establishments to people other than cooperatives? A. No.

Q. You don't know of any such cases? A. Not to the same extent.

Q. I did not ask you that. Do you know of any cases? A. Yes, one or two.



Q. How many do you know of each class that you can speak of definitely? A. I know of ten who have sold to cooperatives within a reasonable time and I know of four who have sold to others. That has come to my attention.

Q. Do you know the reason? A. The reason for these transactions is that where the cooperative is taking over the premises it is usually for cash.

Q. I am talking about your knowledge. A. In the cases I have reference to they were cash deals which were very attractive to the merchant.

Q. Naturally, or he would not have sold. A. We don't always get cash deals in turning over a business.

Q. Did you ever know a retailer to turn over to another retailer? A. Not in every case is it cash, but in all cases with the cooperatives it is cash.

Q. How many do you know? A. I would not make a statement.

BY MR. MILLIKEN:

Q. When you said that there were five thousand retail stores, did you refer to all Canada? A. No, our own membership.

Q. Where are they? A. In this province.

Q. And that is not necessarily all the retail stores? A. No.

Q. Correct me if I am wrong in the impression I have about the five thousand retail stores. Mr. Fitzpatrick said that in the last year there were fifteen additional stores which had been bought by cooperatives in Alberta, which would be one third of 1 per cent of five thousand? A. Yes.

Q. I thought it was a great deal more myself.





A. There would be a great many more if it were not for the war-time regulations.

BY MR. PARKER:

Q. During the period in which these ten and four, respectively, changed hands as you have mentioned, how many new independent retailers have sprung up in the province?

A. In what period?

Q. In the same period in which the transaction took place in connection with the ten you mentioned. A. None.

Q. Do you know that? A. None to my knowledge. It is easily explained. The reason is that if they open a new store today there is no guarantee that they can get merchandise.

Q. Has your association any records from which you can answer the question as to whether any new independent retailers have gone into business during the same period you had in mind when speaking about the ten who sold to cooperatives, and the other four you mentioned? A. No. I have knowledge of businesses being taken over.

THE CHAIRMAN: There are restrictions?

THE WITNESS: They can get into business by getting a permit but can't be guaranteed the supplies. The original order 184 was amended.

BY MR. ELLIOTT:

Q. Are the members of your association operating incorporated companies or incorporated concerns, or some one and some the other? A. Some one and some the other.

MR. LIPSETT: I would like, Mr. Chairman, on my own behalf -- and I think I speak for all members of the profession -- to say, seeing that this is the last case, how much pleasure it gives all of us to appear before the Commission. I would like to thank you for the extremely



courteous and patient hearing with which all the cases have been received.

THE CHAIRMAN: You anticipated my remarks, Mr. Lipsett. I was going to thank the Calgary Bar and Counsel here for the great assistance they have been in helping us on with our work.

MR. MILVAIN: Mr. Parker has asked me to make a formal submission, on behalf of the Southern Dairy Pool Limited, that there was no provision similar to the present section 40 of the articles prior to the amendment. In other words, the obligation to distribute to its members was then found in the contract and not in the articles.

--- The Commission thereupon adjourned to meet at Edmonton on Thursday, January 25, at 10.30 a. m.

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